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Legislative History – Montana Session Law

Chapter: 218 Session L: 2005

Bill Number: SB 470

Checklist of Bill History

History and Final Status Sheet	☒
Introduced Bill	☒
Fiscal Note	☐
Third Reading Bill	☐
Final Version of Bill	☐

House

Committee: Judiciary

Hearing Date(s): 3/23/2005

Committee Report: 3/30/2005

Conference Committee

Hearing Date(s):

Conference Committee Report:

Senate

Committee: Judiciary

Hearing Date(s): 2/17/2005

Committee Report: 2/17/2005

Compiler Notes

Compiled by: SK Marshall

Date: 1/29/2025

Notes: Audio/Video recordings can be found with the Montana Historical Society

Thank you!

Exported Data

Date	Action	Committee	Votes (Yes)	Votes (No)	Media
04/14/05	Chapter Number Assigned				
04/14/05	(S) Signed by Governor				
04/07/05	(S) Transmitted to Governor				
04/07/05	(H) Signed by Speaker				
04/06/05	(S) Signed by President				
04/06/05	(C) Printed - New Version Available				
04/06/05	(S) Returned from Enrolling				
04/06/05	(S) Sent to Enrolling				
04/05/05	(H) Returned to Senate				
04/05/05	(H) 3rd Reading Concurred		100	0	
04/05/05	(H) Scheduled for 3rd Reading				
04/04/05	(C) Printed - New Version Available				
04/04/05	(H) 2nd Reading Concurred		97	1	
04/04/05	(H) Scheduled for 2nd Reading				
03/30/05	(H) Committee Report--Bill Concurred	(H) Judiciary			
03/30/05	(H) Committee Executive Action--Bill Concurred	(H) Judiciary	18	0	
03/23/05	(H) Hearing	(H) Judiciary			
03/07/05	(H) Referred to Committee	(H) Judiciary			
03/07/05	(H) First Reading				
02/21/05	(S) Transmitted to House				
02/21/05	(S) 3rd Reading Passed		42	8	
02/21/05	(S) Scheduled for 3rd Reading				
02/19/05	(S) 2nd Reading Passed on Voice Vote		44	6	
02/19/05	(S) Scheduled for 2nd Reading				
02/17/05	(S) Committee Report--Bill Passed	(S) Judiciary			
02/17/05	(S) Committee Executive Action--Bill Passed	(S) Judiciary	10	2	
02/17/05	(S) Hearing	(S) Judiciary			
02/12/05	(C) Introduced Bill Text Available Electronically				
02/12/05	(S) Referred to Committee	(S) Judiciary			
02/12/05	(S) First Reading				
02/12/05	(S) Introduced				
02/12/05	(C) Draft Delivered to Requester				
02/11/05	(C) Draft Ready for Delivery				
02/11/05	(C) Draft in Assembly/Executive Director Review				

Date	Action	Committee	Votes (Yes)	Votes (No)	Media
02/11/05	(C) Draft in Final Drafter Review				
02/11/05	(C) Bill Draft Text Available Electronically				
02/11/05	(C) Draft in Input/Proofing				
02/10/05	(C) Draft to Drafter - Edit Review [SAB]				
02/10/05	(C) Draft in Edit				
02/10/05	(C) Draft in Legal Review				
02/09/05	(C) Draft to Requester for Review				
01/07/05	(C) Draft Request Received				

SENATE BILL NO. 470
INTRODUCED BY D. HARRINGTON

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT MEETINGS OF THE SUPREME COURT ARE SUBJECT TO THE OPEN MEETING LAW; PROVIDING AN EXCEPTION FOR JUDICIAL DELIBERATIONS IN AN ADVERSARIAL PROCEEDING; AMENDING SECTION 2-3-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-3-203, MCA, is amended to read:

"2-3-203. Meetings of public agencies and certain associations of public agencies to be open to public -- exceptions. (1) All meetings of public or governmental bodies, boards, bureaus, commissions, agencies of the state, or any political subdivision of the state or organizations or agencies supported in whole or in part by public funds or expending public funds, including the supreme court, must be open to the public.

(2) All meetings of associations that are composed of public or governmental bodies referred to in subsection (1) and that regulate the rights, duties, or privileges of any individual must be open to the public.

(3) ~~Provided, however, the~~ The presiding officer of any meeting may close the meeting during the time the discussion relates to a matter of individual privacy and then if and only if the presiding officer determines that the demands of individual privacy clearly exceed the merits of public disclosure. The right of individual privacy may be waived by the individual about whom the discussion pertains and, in that event, the meeting must be open.

(4) (a) ~~However, except~~ Except as provided in subsection (4)(b), a meeting may be closed to discuss a strategy to be followed with respect to litigation when an open meeting would have a detrimental effect on the litigating position of the public agency.

(b) A meeting may not be closed to discuss strategy to be followed in litigation in which the only parties are public bodies or associations described in subsections (1) and (2).

(5) The supreme court may close a meeting that involves judicial deliberations in an adversarial proceeding.

~~(5)(6)~~ Any committee or subcommittee appointed by a public body or an association described in subsection (2) for the purpose of conducting business ~~which~~ that is within the jurisdiction of that agency is subject

to the requirements of this section."

NEW SECTION. **Section 2. Effective date.** [This act] is effective on passage and approval.

- END -

SENATE BILL NO. 470
INTRODUCED BY HARRINGTON, WANZENRIED

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT MEETINGS OF THE SUPREME COURT ARE SUBJECT TO THE OPEN MEETING LAW; PROVIDING AN EXCEPTION FOR JUDICIAL DELIBERATIONS IN AN ADVERSARIAL PROCEEDING; AMENDING SECTION 2-3-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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NEW SECTION. **Section 2. Effective date.** [This act] is effective on passage and approval.

- END -



AN ACT CLARIFYING THAT MEETINGS OF THE SUPREME COURT ARE SUBJECT TO THE OPEN MEETING LAW; PROVIDING AN EXCEPTION FOR JUDICIAL DELIBERATIONS IN AN ADVERSARIAL PROCEEDING; AMENDING SECTION 2-3-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

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Section 2. Effective date. [This act] is effective on passage and approval.

- END -

I hereby certify that the within bill,
SB 0470, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2019.

Speaker of the House

Signed this _____ day
of _____, 2019.

SENATE BILL NO. 470

INTRODUCED BY HARRINGTON, WANZENRIED

AN ACT CLARIFYING THAT MEETINGS OF THE SUPREME COURT ARE SUBJECT TO THE OPEN MEETING LAW; PROVIDING AN EXCEPTION FOR JUDICIAL DELIBERATIONS IN AN ADVERSARIAL PROCEEDING; AMENDING SECTION 2-3-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

MINUTES

MONTANA SENATE 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN MIKE WHEAT**, on February 17, 2005 at 8:05 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Sen. Mike Wheat, Chairman (D)
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jon Ellingson (D)
Sen. Jesse Laslovich (D)
Sen. Dan McGee (R)
Sen. Lynda Moss (D)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Gary L. Perry (R)
Sen. Jim Shockley (R)

Members Excused: Sen. Jeff Mangan (D)

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Mari Prewett, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 470, 2/14/2005; SJ 23,
2/14/2005; SJ 25, 2/14/2005; SB
462, 2/14/2005; SB 452, 2/14/2005;
SB 453, 2/14/2005; SB 472,
2/14/2005; SB 493, 2/14/2005
Executive Action: SB 472; SB 453; SJ 23; SJ 25; SB
470; SB 472

CHAIRMAN WHEAT informed the Committee of the order of bills for the day: SB 470, SJ 23, SJ 25, SB 462, SB 453, SB 452, SB 472, and SB 493. He opened the hearing on SB 470.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 1.0}

HEARING ON SB 470

Opening Statement by Sponsor:

SEN. DAN HARRINGTON (D), SD 38, opened the hearing on **SB 470**, Certain supreme court meetings to be open.

SEN. HARRINGTON provided a written version of his opening statements to the Committee. He explained to the Committee that SB 470 would provide for the Supreme Court to open all non-litigation conferences. This would put the Supreme Court in compliance with Article 2, Section 9, of the Montana Constitution. He proceeded to read his statement to the Committee. He expressed that there are many different types of hearings which the Supreme Court hears other than adversarial issues. He wanted to instruct the Supreme Court that they must follow the same rules as they require others to follow. The bill would mandate the need to open the administrative conferences of the Supreme Court.

EXHIBIT(jus39a01)

{Tape: 1; Side: A; Approx. Time Counter: 0.9 - 6.8}

Proponents' Testimony:

Ed Smith, Clerk of the Montana Supreme Court, stood before the Committee to strongly support SB 470. He felt that the bill was a fair piece of legislation that addressed the problem of the Supreme Court conferences not being open to the public, in violation of Article 2, Section 9, Montana Constitution, Right to Know. He noted that the Supreme Court had expanded this provision to many governmental entities and bodies. However, the Supreme Court has declined to implement an open government process for themselves. He reiterated that the Supreme Court handles many matters not related to litigation. He felt that these other matters fall under the mandate of the Open Meeting Law. He believed that these administrative deliberations should be allowed to be observed. He expressed that there were many important decisions being made with no notice given or minutes recorded. He indicated that many district court judges would like to observe the Supreme Court conferences when discussions

and decisions were being made by the Court that affect their offices. He claimed that the public would be better served when they could observe decisions being made in the open. He declared that institutional safeguards must be in place for the protection of all. He saw this bill as a small incremental step of great significance. He urged the Committee to pass SB 470. He mentioned that former Justice Trieweiler had given him a letter to be entered into record. He also provided a written version of his testimony and a copy of the order and opinion that appointed the chair of the Districting and Apportionment Commission in 1999.

[EXHIBIT\(jus39a02\)](#)

[EXHIBIT\(jus39a03\)](#)

[EXHIBIT\(jus39a04\)](#)

{Tape: 1; Side: A; Approx. Time Counter: 6.8 - 11.4}

Harris Himes, Montana Family Coalition, thought that this bill would be an excellent law. He thought that having open conferences would be useful and appropriate.

{Tape: 1; Side: A; Approx. Time Counter: 11.4 - 12.9}

Al Smith, Montana Trial Lawyers Association, spoke in support of the bill. He mentioned that the Court had applied the constitutional Right to Know to other governmental agencies. He did not think that having open conferences would inordinately interfere with the functions of the Court.

{Tape: 1; Side: A; Approx. Time Counter: 12.9 - 13.5}

Ron Newbury, an Attorney Representing the Montana Newspapers Association, spoke in support of the bill. They felt that the Supreme Court has the responsibility of having open meetings.

{Tape: 1; Side: A; Approx. Time Counter: 13.5 - 14.6}

John Shontz, Lee Enterprises, indicated that one of the issues was that the Supreme Court has been a strong supporter of the Public's Right to Know when it came to various other governmental agencies. He felt that there were three important constitutional pieces to the issue: 1) the Open Meeting Law, 2) the right to document meetings, and 3) the right of the public to participate in governmental decisions. He asserted that the Open Meeting Law applied to the Supreme Court, whether they followed it or not. He felt that the second two pieces also applied to the Supreme Court. He believed that the third area of the law was incredibly important. He mentioned that there were exemptions to this law

including the Governor's Office and the Supreme Court. He suggested to the Committee that as far as non-litigation issues were concerned the exemption be removed from the statute as it relates to the Supreme Court. This would allow non-litigation cases to be opened with the public's right to participate. He felt that the Supreme Court, being a matter of significant public interest, should provide adequate notice that a meeting or decision was going to occur and provide to the public all of the information that is going to be used to make a decision, provide adequate time for the public to research the issue, and provide adequate time for the public to present its views before a final decision is made by the government entity.

{Tape: 1; Side: A; Approx. Time Counter: 14.6 - 24.7}

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. BRENT CROMLEY, SD 25, BILLINGS, asked if the matter had ever been litigated.

Mr. Shontz replied that in terms of going to court, the matter had never been litigated.

SEN. SHOCKLEY followed up by asking if it would not be simpler to "knock on the door".

Mr. Shontz agreed that it would be.

SEN. SHOCKLEY wondered if a suit brought against the Supreme Court would have defenses based on statute or the constitution.

Mr. Shontz responded that the media in Montana would not create the situation for a story. He felt that it was a constitutional issue. He did not know if the Court would look at statutory law in terms of the Courts own operations.

{Tape: 1; Side: A; Approx. Time Counter: 24.7 - 27.8}

SEN. JIM SHOCKLEY, SD 45, VICTOR, cited Line 28. He asked if it meant that when the Supreme Court was deciding how they would vote on a case, the hearing would still be closed to the public.

Mr. Shontz affirmed that the hearing would be closed. However, he felt that the language in Line 28 should be amended in order to withstand constitutional arguments. The reason he gave was

that under the Right to Know Law the Court has consistently held, based on the acts of the Constitutional Convention, that the legislature does not have the authority, under the Constitution, to close people's access to government. He gave an example where the legislature tried to close access to the public.

{Tape: 1; Side: A; Approx. Time Counter: 27.8 - 29.7}

Closing by Sponsor:

SEN. HARRINGTON pointed out that the bill would affect only non-litigation items. He felt that it was an important area and was helping to open the door to the people of Montana. He expressed that he would appreciate a do pass on the bill.

{Tape: 1; Side: B; Approx. Time Counter: 0 - 0.7}

CHAIRMAN WHEAT closed the hearing on SB 470 and opened the hearing on SJ 23.

{Tape: 1; Side: B; Approx. Time Counter: 0.7 - 0.8}

HEARING ON SJ 23

Opening Statement by Sponsor:

SEN. JIM ELLIOTT (D), SD 7, opened the hearing on **SJ 23**, Urge federal trade negotiators to consult with Montana officials.

SEN. ELLIOTT informed the Committee that SJ 23 dealt with the North American Free Trade Act (NAFTA) and other trade agreements that the United States government has been party to. The concern he expressed was that these agreements benefit major international corporations more than they benefit the state of Montana. He thought that it was important for Montana to be able to preserve the state's rights. He attested that the trade treaties were created by international trade corporations who have the best interest for their stockholders but not for the citizens of America. He reported that trade treaties did not take a super majority of the Senate to ratify and are not amendable.

He expressed that one of the most significant issues was the usurpation of the constitutional rights of Americans vis-a-vis those of foreign investors. He gave a few examples where the US has been sued by individual investors per the NAFTA and the Central American Free Trade Agreement (CAFTA). He pointed out that if an American citizen brought a Takings Action before a

court of law, 90% of the value of that property must be taken. However, he noted that this was not the case in the international treatise. Furthermore, he claimed that these treaties usurp the rights of local and state governments to rule and regulate under the state's constitutional charters. He reported that Idaho and Montana might have energy laws that do not comply with NAFTA's access to free markets clause. He also indicated that the procurement practices of the state of Montana would not comport with NAFTA. He expressed that Montanans are willing to trade but not to the extent of giving up their right to self-government.

SEN. ELLIOT asserted that SJ Resolution 23 asked that the legislature be consulted by the United States trade representative so that Montana can have a say in how the items in the treaties may affect Montana. It would also ask the congressional delegation, when they look at the treatise, to consider the best interest of the state of Montana and not the mega-corporations of the world. He reserved the right to close.

{Tape: 1; Side: B; Approx. Time Counter: 0.8 - 8.2}

Proponents' Testimony:

Derek Goldman, Volunteer and Board Member of Community Action for Justice in the Americas, provided a written version of his testimony. He referred to the Investor State Law Suit Provisions of the trade agreements. He noted that the most pressing trade agreement was CAFTA. The Investor State Law Suit Provision allows corporations to sue governments. It is modeled after Chapter 11 of NAFTA. He mentioned that there have been 27 Chapter 11 lawsuits that have been brought to bear since 1994. He gave an example of a Chapter 11 lawsuit which allowed for the violation of the US Clean Air Act. He talked briefly about preferences in procurement, when the state says it will purchase products giving preference to a certain type of goods. Under the procurement laws, the Made-In-Montana Program and others that encourage the purchasing of Montana products would be illegal. He gave the Committee a handout by the Montana Cattleman's Association and R-Calf. He attested that his organization encourages the trade of goods and the exchange of ideas throughout the world. However, they support trade agreements that have standards for human rights, the rights of labor, the right to clean air, clean water, and the protection of public health and the environment. Mostly they feel that international trade agreements should grant no greater rights to foreign corporations than are granted to US citizens under US law. He asked the Committee to support SJ Resolution 23.

EXHIBIT(jus39a05)

EXHIBIT(jus39a06)

{Tape: 1; Side: B; Approx. Time Counter: 8.2 - 13.5}

Darrell Holzer, Representing the Montana American Federation of Labor-Congress of Industrial Organizations (AFL-CIO), stood in strong support of SJ 23. He emphasized that the resolution was attempting to show what the fair trade/free trade agreements are really doing to America. He indicated that the US was being challenged to compete with countries that have no value for workers' rights, environmental rights, or human rights. He expressed that the laws being passed at the legislature were subject to negation by the free trade policies. He asserted that many of the decisions were being made behind closed doors with no input by Americans. He claimed that since NAFTA had been introduced, Montana had lost over 1,700 jobs. He concluded by saying that the resolution was the state of Montana's opportunity to send clear directions to the congressional delegation about the problems that exist and tell them that Montanans want them to take a leadership position and address the issues.

{Tape: 1; Side: B; Approx. Time Counter: 13.5 - 16.2}

Don Judge, Representing Teamsters Local 190, mentioned that the Teamsters Union have been directly affected by NAFTA. He encouraged the Committee's support of the resolution.

{Tape: 1; Side: B; Approx. Time Counter: 16.2 - 16.7}

Nancy Schlepp, Representing Montana Farm Bureau Federation, stood in support of SJ 23. She remarked that the Federation supports trade promotion authority for the president, which would give the president the authority to send a delegation out to make a trade package. She mentioned that there was a large provision of CAFTA which dealt with sugar goods. She noted that this would be bad for Montana. She asserted that the western states need to be a part of the decision-making process and that the resolution was their way of telling congress that they are interested.

{Tape: 1; Side: B; Approx. Time Counter: 16.7 - 18.6}

Gene Fenderson, Representing the Montana District Council of Laborers and the Montana Progressive Labor Caucus, stood in strong support of the resolution.

{Tape: 1; Side: B; Approx. Time Counter: 18.6 - 18.9}

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor:

SEN. ELLIOT pointed out Line 24, Page 1, of the Resolution.

{Tape: 1; Side: B; Approx. Time Counter: 18.9 - 20}

CHAIRMAN WHEAT closed the hearing on SJ Resolution 23. He opened the hearing to SJ Resolution 25.

HEARING ON SJ 25

Opening Statement by Sponsor:

SEN. JIM ELLIOTT (D), SD 7, opened the hearing on SJ 25, Urge congressional action on corporate rights.

SEN. ELLIOT carried this resolution for REP. MARY CAFERRO. He believed that this resolution tied in directly with SJ Resolution 23. He expressed that there was a concern that large multi-national corporations will grow at the expense of the common people of the United States of America. He gave a brief history of the corporation. He indicated that their original purpose was to own land where government could not. They were meant to perform specific acts for a specific amount of time. He felt that government has ceded control to corporations. He reserved the right to close.

{Tape: 1; Side: B; Approx. Time Counter: 20 - 24.8}

Proponents' Testimony:

Al Smith, Representing Montana Trial Lawyers Association, spoke in support of the resolution. He mentioned that early in history corporations could be controlled by the government and, in fact, the existence of certain corporations lead to America's revolution. He reminded the Committee of what the corporations were allowed to do when they were first created. He noted that Article 13, Section 1, provides the legislature power to charter corporations and a mandate to the legislature to provide protection and education for the people against harmful or unfair practices by corporations. He urged the Committee's support for the resolution.

{Tape: 1; Side: B; Approx. Time Counter: 24.8 - 27.4}

Gene Fenderson, Representing the Montana District Council of Laborers and the Montana Progressive Labor Caucus, stood in strong support of the resolution. He felt that the development of corporations and the use of their power has caused many problems in our society. He felt strongly that the resolution should be passed.

{Tape: 2; Side: A; Approx. Time Counter: 0 - 0.9}

Don Judge, Representing Teamsters Local 190, expressed strong support for the resolution. He discussed the power of corporations and the harm that it has caused. He encouraged a do pass for the resolution. He provided an article from the St. Louis Post talking about WR Grace.

EXHIBIT(jus39a07)

{Tape: 2; Side: A; Approx. Time Counter: 0.9 - 2.7}

Derek Goldman, Representing Community Action for Justice in the Americas, spoke in support of the resolution.

{Tape: 2; Side: A; Approx. Time Counter: 2.7 - 2.9}

Cedron Jones expressed that the roles of government and private enterprises have been changing. He thought that the debate over who should supply key services, government or corporations, would only intensify. He felt that the right of corporations to free speech and privacy, made the debate less fair because corporations have so many more resources with which to speak that they are capable of drowning out citizens' voices.

{Tape: 2; Side: A; Approx. Time Counter: 2.9 - 6}

Opponents' Testimony:

Nancy Schlepp, Representing Montana Farm Bureau Federation, stood in opposition to SJ 25. She indicated that it had been better for farms to incorporate rather than form partnerships. Therefore, there are a number of ranches and farms, as well as small businesses, in Montana that will be under corporate law. For this reason they had to oppose the resolution.

{Tape: 2; Side: A; Approx. Time Counter: 6 - 7.3}

Informational Testimony: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor:

SEN. ELLIOT closed by briefly reminding the Committee that President Eisenhower had warned America about a military industrial complex that could usurp the rights of American citizens. He did not want to malign corporations but he was passionate about regaining and retaining the rights of the individual American citizen which have been eroded.

{Tape: 2; Side: A; Approx. Time Counter: 7.3 - 8.6}

SEN. WHEAT closed the hearing on SJ Resolution 25 and opened the hearing on SB 462.

HEARING ON SB 462**Opening Statement by Sponsor:**

SEN. KEITH BALES (R), SD 20, opened the hearing on **SB 462**, Revise venue requirements for actions against state agencies.

SEN. BALES explained that the bill said if there was a question on any permit, license, authorization, or certificate by a state agency, action would take place in the county, or one of the counties, which that action affected. In essence this would take a burden off the individuals, and the people in those areas would be more aware of the circumstances. He reserved the right to close.

{Tape: 2; Side: A; Approx. Time Counter: 8.6 - 10.2}

Proponents' Testimony:

John Bloomquist, Representing Montana Stockgrowers Association, stood in support of the bill. He felt that it would clean up venue issues on challenges to state agency actions. He thought that the bill made changes across the board. He indicated that state land decisions or decisions made by the Department of Natural Resources and Conservation (DNRC) were the most important to the Stockgrowers Association. He urged the support of the Committee on SB 462.

{Tape: 2; Side: A; Approx. Time Counter: 10.2 - 12.1}

John Youngberg, Representing the Montana Farm Bureau Federation, explained that the majority of the Federation's members were small businesses. He expressed that the need to travel in Montana to try a case with the DNRC makes it expensive and for

some not worth the time or the money. He urged the Committee to support SB 462.

{Tape: 2; Side: A; Approx. Time Counter: 12.1 - 13}

Ellen Engstedt, Representing Montana Wood Products Association, expressed support for SB 462. She felt that if a lawsuit was filed against a state timber sale it only made sense that the actions be taken in the county where it was filed.

{Tape: 2; Side: A; Approx. Time Counter: 13 - 13.7}

Jim Mockler, Executive Director of the Montana Coal Council, felt that the local judge and the local people should have more of an opportunity to decide these decisions than the common judges in Helena. He encouraged the Committee to support the bill.

{Tape: 2; Side: A; Approx. Time Counter: 13.7 - 14.2}

Opponents' Testimony:

Ann Hedges, Representing Montana Environmental Information Center (MEIC), expressed that a similar bill had gone through last session. She provided a list of acts and laws that had been past and require action to be brought in the county where the facility is located. She asserted that DNRC usually gets sued under the Montana Environmental Policy Act which requires that the case be heard in the county of origin. She did not see anything in the bill which was not already covered by other laws. She felt that the bill was superfluous and urged the Committee to reject it.

{Tape: 2; Side: A; Approx. Time Counter: 14.2 - 16.7}

Informational Testimony: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor:

SEN. BALES commented that there would not be a fiscal note attached to the bill. He addressed Ms. Hedges, stating that there were loopholes in the previous legislation which needed to be addressed. He asked the Committee to give adequate consideration to the bill.

{Tape: 2; Side: A; Approx. Time Counter: 16.7 - 17.7}

CHAIRMAN WHEAT closed the hearing on SB 462 and opened the hearing on SB 452.

HEARING ON SB 452**Opening Statement by Sponsor:**

SEN. GARY PERRY (R), SD 35, opened the hearing on **SB 452**, Penalty for violation of no contact order.

SEN. PERRY explained that SB 452 was a result of an interim study done by the Domestic Violence Fatalities Review Board.

EXHIBIT(jus39a08)

{Tape: 2; Side: A; Approx. Time Counter: 17.7 - 18.9}

Proponents' Testimony:

Judy Wang, Assistant City Attorney from Missoula, informed the Committee that in Missoula, they were currently prosecuting 300 cases of domestic violence every year. She covered three issues: 1) the problem, 2) how SB 452 would deal with the problem, and 3) written testimony from others who were unable to attend. She explained that the part that is seen in the criminal justice department, the violence, is only a part of the abusive relationship. She expressed that the problem is power and control. Examples she gave of this power and control were the phone calls received by victims from their attackers while they were in jail. She informed the Committee that SB 452 would give law enforcement and the judiciary tools to deal with the power and control issues after an arrest is made. It would give local judges the authority to issue a standard order that must be followed when an officer makes an arrest for partner assault. The standard order could make it illegal to contact the victim after arrest for at least 72 hours. The judge can then decide if the standard order needs to be continued, amended, or stopped. If an offender violates the no contact order they would be charged with a misdemeanor offense. She introduced a few letters of support for the bill. She spoke for Brian Fisher, a member of the Domestic Violence Fatalities Review Board. She urged the Committee to vote a do pass on SB 452.

EXHIBIT(jus39a09)

{Tape: 2; Side: A; Approx. Time Counter: 18.9 - 26.8}

Carl Ibsen, Captain with the Missoula County Sheriff's Department, provided a written version of his testimony. He remarked that as a sheriff he was missing the tool to protect the

victim after the attacker is in jail. He encouraged the Committee to support SB 452.

EXHIBIT(jus39a10)

{Tape: 2; Side: B; Approx. Time Counter: 0 - 1.6}

Leslie McClintock, Senior Grants Administrator with the Office of Planning and Grants in Missoula and Supervisor of Missoula City/County Crime Victim Advocate Program, explained what the Crime Victim Advocate Program does. She asserted that domestic violence is different than other crimes in that there is an intimate relationship between the offender and the victim. She expressed that the pattern of power and control as well as intimidation causes problems in how the cases are handled. She urged the Committee to pass the bill.

{Tape: 2; Side: B; Approx. Time Counter: 1.6 - 5.6}

Ethan Lerman, An Attorney with Montana Legal Services, provides aid to low income residents of the state of Montana. He saw this bill as giving another layer of protection, it could aid in the criminal prosecution if there is one, it might also prevent future incidences of domestic violence, and it would aid in efficiency. He strongly urged the passage of SB 452.

{Tape: 2; Side: B; Approx. Time Counter: 5.6 - 7}

Tanya Campbell, Criminal Victims Advocate for the Crime Victim Advocate Program in Missoula, indicated that the bill specifically addressed the 24 to 72 hour period after the attack when the offender could have influence over the victim. She reiterated that contact during that time includes among others guilt, intimidation, and threats. She thought that the bill would allow the voice of reason to break through after a traumatic experience.

{Tape: 2; Side: B; Approx. Time Counter: 7 - 8.5}

Susan Hanson, Executive Director of Doves, the Crime Victims Advocate Program for Lake County; and board member for the Montana Coalition Against Domestic and Sexual Violence, supported SB 452.

{Tape: 2; Side: B; Approx. Time Counter: 8.5 - 8.9}

Mikeal Baker-Hajek, Executive Director of a Law Enforcement Based Victim/Witness Program for Great Falls and Cascade County, thought that it was important to add this extra layer of protection and safety for domestic violence victims. By making the calls from jail a chargeable crime, it would give the victims breathing room to make decisions regarding safety.

{Tape: 2; Side: B; Approx. Time Counter: 8.9 - 10}

Donetta Klein, Executive Director of the Montana Coalition Against Domestic and Sexual Violence, seconded the reasons previously stated. She strongly urged a do pass on the bill.

{Tape: 2; Side: B; Approx. Time Counter: 10 - 10.4}

Ali Bovington, Representing the Attorney General's Office, thanked **SEN. PERRY** for carrying the bill and all of the proponents who had testified. She referred to HB 190, which was an extension of the Domestic Violence Fatality Review Commission. She clarified that the bill was not an order of protection, but a no contact order which does not have to be requested by the victim. She felt that it was an important bill to protect those who were the unfortunate victims of domestic violence.

{Tape: 2; Side: B; Approx. Time Counter: 10.4 - 12.4}

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. DANIEL MCGEE, SD 29, LAUREL, recounted the steps taken by the sheriffs and deputies who respond to a domestic disturbance call. He asked if they were required to make an arrest.

Mr. Ibsen replied that as a general rule they are required to make an arrest. He informed the Committee that the law requires a good reason for not making an arrest.

SEN. MCGEE followed up by asking how they made the determination of who they were going to arrest.

Mr. Ibsen remarked that the decision was made based on experience, the dynamics of the incident, the primary aggressor, among others. He expressed that it was based on each incident because they are all unique.

SEN. MCGEE wondered if Mr. Ibsen had ever arrested the wrong individual.

Mr. Ibsen answered that he had not.

SEN. MCGEE inquired if arrest equaled guilt.

Mr. Ibsen replied that if he did not think a person was guilty he would not arrest them. Therefore, for him, personally, it would be but the technical determination would have to be up to the jury and judge.

{Tape: 2; Side: B; Approx. Time Counter: 12.4 - 14.4}

SEN. MCGEE understood that Ms. Wang wanted a blanket sanction against anyone who is arrested.

Ms. Wang disagreed. She indicated that what they were asking with the bill was for judges to have the authority to issue a standard order, similar to what they do now with standard bonds. The standard order would be enacted when an offender is arrested for a partner or family member assault. It is good only up to 72 hours or until the offender first appears and is limited to the victim of domestic violence.

SEN. MCGEE asserted that Ms. Wang kept mentioning offenders and victims. He asked if until someone has been ruled by the court to be one or the other can they be labeled.

Ms. Wang believed that it was accurate and fair to call someone a defendant once they have been criminally accused. She indicated that offender and defendant were interchangeable and thus it was accurate to call an individual an offender once they have been charged with a criminal offense.

SEN. MCGEE followed up stating that the problem he had with the bill was that it set up a precondition that the individual is an offender, not just a defendant. He asserted that they had already decided that the person is the offender and that the court has to issue this particular type of order before the court has heard the person. He wanted to know how this bill fit in with American jurisprudence.

Ms. Wang replied that they had looked through the system and found various analogies to what SB 452 would do. She informed the Committee that in a stalking case a victim or a peace officer can tell an individual that they cannot contact the victim. She mentioned the standard bond and the Criminal Procedure Code which allows judges the authority to do anything appropriate once the

criminal charge had been filed to protect the public or any particular citizen. She also mentioned the Domestic Violence Code which talks about peace officers taking necessary actions to protect any citizen enrolled in a domestic violence incident. She did not believe that they were deciding that a person is guilty but that there has been a probable cause determination that the individual should be charged with the offense.

{Tape: 2; Side: B; Approx. Time Counter: 14.4 - 18.2}

SEN. BRENT CROMLEY, SD 25, BILLINGS, understood that the bill called for a standard order and that a judge had no input into a particular case.

Ms. Wang informed the Committee that there would be a standing order, issued upon arrest. The judge could determine what the standing order would be in their jurisdiction and it would be effective from arrest until first appearance.

SEN. CROMLEY followed up, stating that he agreed with the intent of the bill but not with the presentation. He reiterated that there would only be one standing order that would be issued by the judge and that would go on until the judge revoked it.

Ms. Wang clarified that the standing order would be issued by the judge, the judge would decide what the standing order was in that jurisdiction, and then the police officer would serve the judge's standing order on an offender verbally and in writing at the time of the arrest.

SEN. CROMLEY asked if the judge who issues the order could put specific conditions in the order.

Ms. Wang explained that they could. However, there are a number of conditions suggested in the bill draft which the judge could follow or not depending on what they felt was necessary.

SEN. CROMLEY insisted that the order given to the defendant at the time of arrest would have no more specificity in it than the standing order.

Ms. Wang affirmed **SEN. CROMLEY'S** comment. She asserted that the officers had no authority other than what the judge issued as a standing order.

{Tape: 2; Side: B; Approx. Time Counter: 18.2 - 20.2}

SEN. JERRY O'NEIL, SD 3, COLUMBIA FALLS, noted that the bill would allow an individual to be arrested even if the individual

protected by the no contact order invites or allows the defendant to violate the prohibition. He wanted to know if Ms. Wang would have any objections if this was amended to say that if the victim invited the defendant to violate the prohibitions they would also be in violation of the order and may be arrested.

Ms. Wang replied that it was a prior suggestion but that there was a due process problem. The court would have no jurisdiction to give a victim an order whereas they would have the authority over the defendant.

{Tape: 2; Side: B; Approx. Time Counter: 20.2 - 21.3}

Closing by Sponsor:

SEN. PERRY asked the Committee not to forget the seriousness of the bill because of the enforced brevity of the hearing.

{Tape: 2; Side: B; Approx. Time Counter: 21.3 - 21.7}

CHAIRMAN WHEAT closed the hearing on SB 452 and opened the hearing on SB 453.

HEARING ON SB 453

Opening Statement by Sponsor:

SEN. GARY PERRY (R), SD 35, opened the hearing on **SB 453**, Clarify prohibition of hearing examiner amending pleadings.

SEN. PERRY explained why he had brought the bill forward. He reported that there had been a case where an individual was charged with wage discrimination based on gender. He related that the claims examiner in his final decision ruled in favor of the defendant. However, using Rule 15 B of Criminal Procedure, he changed his decision. Rule 15 B says that "such amendments of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time". He stated that the bill was asking that when hearings officers hear contested cases, that they, when acting as the judge, cannot amend pleadings, only the parties could move.

EXHIBIT(jus39a11)

EXHIBIT(jus39a12)

{Tape: 3; Side: A; Approx. Time Counter: 0 - 2.6}

Proponents' Testimony:

Mike Harris, Citizen of Bozeman, spoke in support of the bill.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor:

SEN. PERRY closed on SB 453.

CHAIRMAN WHEAT closed the haring on SB 453 and opened the hearing on SB 472.

{Tape: 3; Side: A; Approx. Time Counter: 2.6 - 3.5}

HEARING ON SB 472

Opening Statement by Sponsor:

SEN. GARY PERRY (R), SD 35, opened the hearing on **SB 472**, Revise county jail work program.

SEN. PERRY brought the bill forth for Gallatin County.

{Tape: 3; Side: A; Approx. Time Counter: 2.6 - 4}

Proponents' Testimony:

Jim Cashell, Sheriff of Gallatin County, thought of this as a housekeeping measure. It coordinated with a piece of legislation that authorized the county commission and the sheriff to establish a county jail work program. The older legislation allows individuals in jail, who are not specifically excluded by statute or by the application process, to participate in a program where they do eight hours of work on a county project and receive credit for 24 hours in jail. He indicated that the program allows the county jails to manage the sentenced population by placing them in work locations. The problem is that the old statute only allows the inmates to be used for county projects and not for city or state projects. He pointed out the important things about the program specifically in that it is voluntary for the county. He noted that the changes to the statute would not force anyone to do anything, it would only open up options for county government in managing their jail

populations. He indicated that it is also voluntary on the inmates part. He related a comment from David Bennett. He related that another statute of the bill would be the two-for-one provision, so that for every day an inmate works they get credit for two days in jail.

{Tape: 3; Side: A; Approx. Time Counter: 4 - 11.4}

Brian Goodkin, Administrator of the Detention Center at the Gallatin County Sheriff's Office, said that the proposed wording changes would allow programs throughout the state to benefit a broader base of the community.

{Tape: 3; Side: A; Approx. Time Counter: 11.4 - 11.8}

Opponents' Testimony: None.

Informational Testimony:

Tim Reardon, an Attorney with the Department of Transportation, thought that some of the language was too broad. He had some proposed amendments to make the bill more acceptable to state agencies.

{Tape: 3; Side: A; Approx. Time Counter: 11.8 - 13.8}

Mike Harris informed the Committee that Gallatin County would support the amendments.

{Tape: 3; Side: A; Approx. Time Counter: 13.8 - 14.1}

At this time, **SEN. MANGAN** arrived at the hearing.

Questions from Committee Members and Responses:

SEN. CROMLEY thought that, by allowing the inmates to work, it might be taking jobs away from other individuals who want to work.

Sheriff Cashell replied that they would be specifically excluded from interfering with a construction project, they cannot replace or displace workers either.

{Tape: 3; Side: A; Approx. Time Counter: 14.1 - 15.8}

SEN. SHOCKLEY asserted that the counties would be able to work with the state on their own and did not think that it needed to go into statute.

Mr. Reardon insisted that the intent of the bill was for counties to work with the state upon request and that it should be done that way. He agreed that common sense should apply, but, unfortunately, it did not always apply.

SEN. SHOCKLEY requested Mr. Reardon to follow up on his mention of a law suit.

Mr. Reardon explained that if an inmate is injured working on a county program and they decide to sue for some reason, there is no criteria for the county to use.

{Tape: 3; Side: A; Approx. Time Counter: 15.8 - 17.5}

CHAIRMAN WHEAT wondered if Sheriff Cashell was representing the other programs across the state or only that of Gallatin County.

Sheriff Cashell informed the Committee that they had brought the bill strictly from Gallatin County. He reported that they have signs and information regarding the program.

CHAIRMAN WHEAT followed up by asking Sheriff Cashell if there would be problems with coordination between the designated detention officer and the state agencies.

Sheriff Cashell replied that it would not be a problem because they would be prohibited from being on construction projects. In addition, he noted that the inmates were provided worker's compensation and orange vests as well as any other need they might have while working. He commented that the public appreciates the program.

{Tape: 3; Side: A; Approx. Time Counter: 17.5 - 20}

Closing by Sponsor:

SEN. PERRY closed on SB 472.

{Tape: 3; Side: A; Approx. Time Counter: 20 - 20.3}

CHAIRMAN WHEAT closed the hearing on SB 472 and opened the hearing on SB 493.

HEARING ON SB 493**Opening Statement by Sponsor:**

SEN. JESSE LASLOVICH (D), SD 43, opened the hearing on **SB 493**, Revise motor vehicle liability insurance laws.

SEN. LASLOVICH informed the Committee that the bill was a revised version of **SEN. HANSON'S** bill. The bill would make anyone convicted of not having liability insurance in the last five years, subject to a random survey. He referred to Page 3, Line 24, through Page 4, Line 3. This states that if an individual is convicted twice of not having liability insurance they must have SR 22 insurance for at least one year. If the individual drops their SR 22, insurance the insurance company must report it to the Department of Justice so they can suspend the driver's license. He provided a copy of the Code 61-6-133 through 61-6-134. He reserved the right to close.

EXHIBIT(jus39a13)

{Tape: 3; Side: A; Approx. Time Counter: 20.3 - 22.8}

Proponents' Testimony:

Roger McGlenn, Executive Director of the Independent Insurance Agents Association of Montana, asserted that SR 22 was a mechanism that is currently in code and is also used in the industry. He urged the support of the Committee.

{Tape: 3; Side: A; Approx. Time Counter: 22.8 - 26}

Brenda Nordland, Representing the Department of Justice, expressed that the first half of the bill dealt with the survey issue. She remarked that the second half of the bill was a significant change from **SEN. HANSEN'S** bill. She noted that the second part of the bill dealt with SR 22. She informed the Committee that the SR 22 was an instrument that was already being used by insurance companies across the US. She cited Lines 24-27, Page 3. She explained that an SR 22 meant that an insurance company who underwrites insurance for an individual, directly files a report, SR 22, with the Department of Justice that says the individual has insurance with their company. The insurance cannot be dropped. She indicated that on Page 3, Line 18, the intent was to have "second or subsequent". She proposed amending the bill to include this. She urged support for the bill.

CHAIRMAN WHEAT asked if there would be a fiscal note attached.

Ms. Nordland replied that she did not know at this time, but thought that there would be a small one.

{Tape: 3; Side: B; Approx. Time Counter: 0 - 0.6}

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. SHOCKLEY commented that there might need to be coordinating language with SB 205.

Closing by Sponsor:

SEN. LASLOVICH closed by saying that Mr. VanHorsen and Jacqueline Lenmark both supported the bill.

{Tape: 3; Side: B; Approx. Time Counter: 0.6 - 1.7}

CHAIRMAN WHEAT closed the hearing on SB 493.

At this time, **SEN. MCGEE** left the hearing.

Executive Action on SB 472

Motion: **SEN. PERRY** moved that SB 472 DO PASS.

Discussion: **Valencia Lane**, Legislative Fiscal Analyst Assistant, read the amendment to SB 472.

Motion/Vote: **SEN. PERRY** moved that SB 472 BE AMENDED. Motion carried 9-1 by voice vote with **SEN. SHOCKLEY** voting no.

{Tape: 3; Side: B; Approx. Time Counter: 1.7 - 5.7}

Motion/Vote: **SEN. PERRY** moved that SB 472 DO PASS AS AMENDED. Motion carried unanimously by voice vote.

{Tape: 3; Side: B; Approx. Time Counter: 5.7 - 6.1}

Executive Action on SB 453

Motion: **SEN. PERRY** moved that SB 453 DO PASS.

Discussion: **SEN. CROMLEY** admitted that he had concerns about the bill. He noted that the hearings officer's order would be the final order, which would be appealable. He did not understand the need for the bill.

CHAIRMAN WHEAT stated that he did not like the bill. He thought that the court, including a hearings officer, has the inherent power to amend the issues so that it conforms to the evidence. He did not think that it was something that needs to be changed. He did not want to tie the hands of the hearings officer.

SEN. PERRY indicated that he had discussed the topic with judges around the state and with Greg Petesch. He did not see a reason that a hearings officer, acting as a judge, should not have the same rules apply to them.

CHAIRMAN WHEAT reiterated his opinion.

SEN. O'NEIL expressed support for the bill. He did not think that it was fair to have a hearings officer make a decision outside of the pleadings.

SEN. PERRY agreed with **SEN. O'NEIL**. He felt that if a hearings examiner, after the hearing, makes a final decision and creates charges on which the defendant was not able to defend themselves at the hearing, would be outside the scope of the law.

SEN. CROMLEY remarked that a court could make the decision on its own to amend the pleadings. He was concerned with the consequences of passing the bill. He felt that it would hurt individuals who were unrepresented.

SEN. PERRY expressed that Rule 15B said that the amendments could be made by a motion of any party, and a judge or hearings examiner would not be a party to the contested case.

{Tape: 3; Side: B; Approx. Time Counter: 6.1 - 13}

Vote: Motion failed 6-6 by roll call vote with **SEN. MOSS**, **SEN. ELLINGSON**, **SEN. PEASE**, **SEN. MANGAN**, **SEN. WHEAT**, and **SEN. CROMLEY** voting no.

Motion/Vote: **SEN. MANGAN** moved that SB 453 BE TABLED AND THE VOTE REVERSED. Motion carried unanimously by voice vote.

{Tape: 3; Side: B; Approx. Time Counter: 13 - 15.5}

Executive Action on SJ 23

Motion/Vote: SEN. CROMLEY moved that SJ 23 DO PASS. Motion carried unanimously by voice vote.

{Tape: 3; Side: B; Approx. Time Counter: 15.5 - 16.3}

Executive Action on SJ 25

Motion: SEN. CROMLEY moved that SJ 25 DO PASS.

Discussion: SEN. AUBYN CURTISS, SD 1, FORTINE, expressed that she could not support the resolution because so many of Montana's rural people have family corporations. She thought that the bill was too broad. She felt that the jobs provided by corporations across the country support America's economy. She saw this resolution as a negative message. She understood that there were culprits but did not think that the whole system needed to be blamed.

{Tape: 3; Side: B; Approx. Time Counter: 16.3 - 18.5}

Vote: Motion failed 5-7 by roll call vote with SEN. O'NEIL, SEN. SHOCKLEY, SEN. MANGAN, SEN. MCGEE, SEN. PERRY, SEN. LASLOVICH, and SEN. CURTISS voting no.

Motion/Vote: SEN. MANGAN moved that SJ 25 BE TABLED AND THE VOTE REVERSED. Motion carried unanimously by voice vote.

{Tape: 3; Side: B; Approx. Time Counter: 18.5 - 20.1}

At this point in time, SEN. MCGEE returned to the meeting the bills were all held open and he was allowed to cast his vote at this time. On SB 472 he voted aye, on SB 453 he voted aye, and on SJ 23 he voted aye.

With SEN. MCGEE'S vote on SB 453, the bill was still on the table with a tie vote.

At this time, SEN. PEASE was allowed to cast his vote for SB 472. He voted aye causing the bill to be passed unanimously.

{Tape: 3; Side: B; Approx. Time Counter: 20.1 - 24.9}

Executive Action on SB 470

Motion: SEN. ELLINGSON moved that SB 470 DO PASS.

Discussion: SEN. CROMLEY stated that he would vote against the bill on principal. He expressed that he did not see the purpose of passing the legislation since it was already in statute.

SEN. CURTISS had a question relating to the language on Line 28. It seemed to her that the language would weaken what they were trying to accomplish with this because almost everything that would reach the Supreme Court would be adversarial.

SEN. CROMLEY replied that it was his understanding that it only addressed the non-controversial things such as scheduling meetings. He asserted that it would not open hearings to contested cases but it would open administrative or non-judicial types of things.

{Tape: 4; Side: A; Approx. Time Counter: 0 - 2.3}

SEN. O'NEIL remarked that he was carrying a bill clarifying what the requirements to practice law are because he thought that it needed to be more clear. He felt that this was an important bill.

Vote: Motion carried 10-2 by roll call vote with SEN. MANGAN and SEN. CROMLEY voting no.

{Tape: 4; Side: A; Approx. Time Counter: 2.3 - 3.9}

Executive Action on SB 452

Motion: SEN. CROMLEY moved that SB 452 DO PASS.

Discussion: SEN. CROMLEY suggested an amendment to delete the last sentence on Page 3. He felt that they were trying to make it appear there would be a specific order done in a particular case. As he understood it, each district judge would be able to issue an order. He did not think that the particular delivery of the standing order was appropriate.

{Tape: 4; Side: A; Approx. Time Counter: 3.9 - 9.6}

Motion: SEN. CROMLEY moved that SB 452 BE AMENDED.

Discussion: SEN. CROMLEY reiterated the reasons for his amendment.

SEN. PERRY asked if, in **SEN. CROMLEY'S** opinion, this amendment would allay **SEN. SHOCKLEY'S** objections to the bill.

SEN. LASLOVICH had spoken with **SEN. SHOCKLEY** and felt that he could reply that the amendment would not allay his concerns. He admitted that he had the same objections.

CHAIRMAN WHEAT commented that he understood what **SEN. CROMLEY** was objecting to. He noted that if the standing order was available, the last sentence would not need to be in the bill. He did not think that it would change the bill at all if the sentence was taken out.

{Tape: 4; Side: A; Approx. Time Counter: 9.6 - 13.4}

Vote: Motion carried 10-1 by voice vote with **SEN. LASLOVICH** voting no.

{Tape: 4; Side: A; Approx. Time Counter: 13.4 - 13.8}

Motion: **SEN. PERRY** moved that SB 452 DO PASS AS AMENDED.

Discussion: **SEN. LASLOVICH** opposed the bill although he agreed with the intent of the bill. Regardless of the amendment he felt that the bill was still an illusion. He asserted that the peace officer is the one who is issuing the no contact order, not the judge. He felt that there was no due process of law. He felt that there had to be some mechanism in place for the judge to review the circumstances.

SEN. CURTISS wondered if there were any statistics which indicate how many of the offenses are one-time occurrences.

SEN. PERRY did not have any statistics.

{Tape: 4; Side: A; Approx. Time Counter: 13.8 - 16.3}

SEN. CURTISS asked if the information was available to the Committee.

SEN. CROMLEY replied that his impression was that a majority of the instances are repeats.

CHAIRMAN WHEAT responded that there were 300 cases per year in Missoula according to Ms. Wang and, according to Ms. McClintock, there were 666 victims of domestic violence. However, he did not recall anything on the repetition of the crimes.

SEN. CROMLEY had some of the same concerns as **SEN. LASLOVICH** but he felt that if a peace officer can choose to make an arrest or give a no contact ticket, it is similar to a notice to appear at court for a speeding ticket.

SEN. LASLOVICH noted that the difference with a notice to appear was that it is in a court setting whereas a no contact order is not issued by a judge but a peace officer. He felt that the order was not a peace officer's duty, but that of the judge.

{Tape: 4; Side: A; Approx. Time Counter: 16.3 - 19.8}

SEN. SHOCKLEY explained that the way the law is drafted, when a cop shows up someone is going to jail. He expressed that they would not get a ticket 99.9% of the time. When in jail, the individual would be arraigned. He felt that there are adequate protections. He also felt that cops do not have the authority to tell an individual where to go.

SEN. ELLINGSON expressed that there was a due process issue that needed to be addressed. However, he felt that another problem is alleged offenders making contact with the alleged victim. In being able to do this, it allows the cycle of repetitive violence to occur. He would not be able to support this bill if it was a no contact order if it lasted longer than 72 hours. He felt that it was important that an offender not be allowed to talk a victim out of proceeding with the case. He felt that the process was appropriate for the situation.

{Tape: 4; Side: A; Approx. Time Counter: 19.8 - 22.6}

SEN. MCGEE agreed with **SEN. LASLOVICH**. He noted that under current law Page 3, Line 11, "the summoning of a peace officer constitutes an exigent circumstance for making an arrest." The problem he said was that due process is missing. He reiterated that calling an individual the offender without due process is a problem. He did not think that making things simple is an excuse to take care of an issue. He related a story where it was a mistake to arrest the husband. His point is that even in a compelling situation the legislature needs to keep sight of due process.

{Tape: 4; Side: A; Approx. Time Counter: 22.6 - 25.5}

SEN. LYNDA MOSS, SD 26, BILLINGS, commented that she was leaning towards not supporting the bill based on the invisible nature of the proponents and opponents.

SEN. O'NEIL cited Page 2, Line 12, as a problem with the bill. He noted that if a call comes from jail, it has to be collect, so the person at home has to accept who they are talking to.

SEN. PERRY replied to **SEN. MOSS'S** comment on not having proponents to the bill. He named off those who had come on behalf of the bill who represent battered women.

{Tape: 4; Side: A; Approx. Time Counter: 25.5 - 28.7}

SEN. PERRY understood **SEN. MCGEE'S** concern about an arrest being made. He asked what the solution would be in a domestic violence situation.

SEN. MCGEE expressed that his response would be lengthy.

Substitute Motion/Vote: **SEN. LASLOVICH** made a substitute motion that SB 452 BE TABLED. Substitute motion carried 7-5 by roll call vote with **SEN. ELLINGSON**, **SEN. WHEAT**, **SEN. CROMLEY**, **SEN. PERRY** voting no and **SEN. MANGAN** voting no by proxy.

{Tape: 4; Side: B; Approx. Time Counter: 0 - 2.4}

Additional documents handed out on this day were a letter by Mr. Barry Stang, of the Montana Motor Carriers Association, regarding SB 403. There was also a memo sent to Ms. Prewett for the Judiciary Committee regarding SJ 19.

[EXHIBIT\(jus39a14\)](#)

[EXHIBIT\(jus39a15\)](#)

ADJOURNMENT

Adjournment: 11:00 A.M.

SEN. MIKE WHEAT, Chairman

MARI PREWETT, Secretary

BRITT NELSON, Transcriber

MW/mp/bn

Additional Exhibits:

EXHIBIT ([jus39aad0.PDF](#))

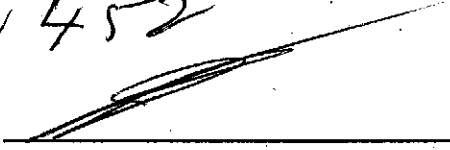
PROXY VOTE

I, the undersigned, hereby authorize Senator PERRY to

vote my proxy on any issue before the Senate JUDICIARY

Committee held on 17 Feb 05, 2005.

Vote No on 452



SENATOR
STATE OF MONTANA

PROXY VOTE

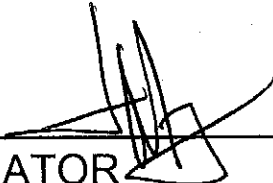
I, the undersigned, hereby authorize Senator WHEAT to
vote my proxy on any issue before the Senate Finance
Committee held on 2/17/05, 2005.

SB 452 - AYE

OTHERS - WHEAT
if action on:

SB 482 - NO

483 - NO



SENATOR
STATE OF MONTANA

DATE February 17, 2005

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SJ 23, SB 470, SB 462

SB 453, SB 452, SB 472, SB 493, SJ 25

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
HARRIS Himes		M.F.C.	470	✓	
Ledie M ^c Clintock	(406) 258-3796	Missoula Time Victim Advocate Program	452	✓	
Tanya Campbell	258-3674	Victim Advocate	452	✓	
CEDRON JONES	442-1271	Self	SJ23 SJ25	✓	
DEREK GOLDMAN	370 6491	Community Action for Justice in the Americas	SJ23 25	✓	
ELLEN ENGSTEDT	443-1266	MT Wood Prod. ASSO.	SB 462	✓	
Nancy Schleppe	570-4105	MT Farm Bureau	SJ23	✓	
Nancy Schleppe	570-4105	11	SJ25		✓
Dore Judge	459-1708	Teamsters Local 190	SJ23 SJ25	X	
AL Smith	443-3824	MTLHA	SB470	X	
GENE FENDERSON	43-6657	LABORERS UNION MONTANA LABOR COUNCIL	SJ-23 SJ-25		
F. RON NEWBURY	442-6520	MONTANA Newspaper Assoc.		X	
Brian Gootkin	582-2131	Callatin Co. Sheriff	472	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

STATEMENT DUE 5:00 PM

DATE February 17, 2005

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SJ 23, SB 470, SB 462
SB 453, SB 452, SB 472, SB 493, SJ 25

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	UPPOSE
Ethan Lerman		MT Legal Serv.	452	✓	
Judy Wang	258-4617	City of Missoula	452	✓	
Darrell Holzer	439-1707	MT ST. AFL-CIO	SJ 23	✓	
Jim Mockler	445-6223	MT Coal Council	SB 462	✓	
John Youngberg	570-4103	MEBS	SB 462	✓	
Susan Hansen	883-3350	DOVES	452	✓	
Mikeal Baker Hayes	771-1180 x219	St. Falls + Cascade County Victim-Witness	452	X	
Mike Harris	581-7357	Gallatin County	472	✓	
	240-0739	MT Coal Council - S.O.	452	✓	
Jim CASHEN	582-2125	GALLATIN COUNTY SO	472	✓	
Carrie Triplett	788-5298	Cascade Co			
Lisa Gunkerson	453-4235	Cascade City	452		
Ali Boringdon	444-5876	Atty Gen'l's Office	452	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

Y77470012 5517111000

DATE February 17, 2005

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SS 23, SB 470, SB 462

SB 453, SB 452, SB 472, SB 493, SS 25

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Al Smith	443-3114	MTLA	SS 25	X	
Doretha Klein	443-7794	MCADSV	SB 452	X	
Tim Beardon	444-6302	MOI			✓
Roger Ableson	442-9555	ITAM	SB 493	X	
Ed Krasnec	225-4014	Jefferson County	SB 409	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

YRATER 02 55 17 11 00

The Bluestone
80 South Warren, P.O. Box 1241
Helena, MT 59624
T 406-442-8670 F 406-442-4953

PETER MICHAEL MELOY
TERRY N. TRIEWEILER
JENNIFER S. HENDRICKS
BRIAN C. BRAMBLETT

email for Terry Trieweiler
pmjohnston@qwest.net

February 17, 2005

Senate Judiciary Committee
State Capitol
Helena, MT 59620

Re: Senate Bill 470

Dear Committee Members:

Please accept the following remarks in support of Senate Bill 470.

Few people are aware that in addition to deciding cases the Montana Supreme Court has many important administrative responsibilities that are indistinguishable from those performed by the other two branches of government. The Supreme Court:

1. Administers the practice of law by deciding standards for admission and discipline of lawyers;
2. Enacts personnel policies for the entire state judiciary;
3. Administers the budget for the state judiciary;
4. Adopts rules of evidence and rules for practice in Montana's Courts;
5. Appoints members to numerous judicial commissions including the Board of Bar Examiners, Commission on Practice, Commission on Technology, District Court Council, and the Judicial Standards Commission which is charged with disciplining judges throughout the state.

In addition, the Montana Supreme Court performs purely political functions such as appointing members to the Judicial Nominating Commission and when necessary appointing the tie-breaking member to the Reapportionment Commission.

After serving 12-1/2 years on the Supreme Court I believe there's no practical reason why these responsibilities can't be subject to the same public scrutiny applied to other governmental agencies. More importantly, I believe that is what the constitution requires.

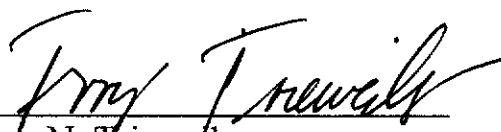
While the argument can and has been made that the Court can operate more efficiently without public scrutiny, that argument has been repeatedly made and rejected by the Court when applied to other public officials. The courts in this state have held that local government cannot conduct private meetings to discuss collective bargaining strategy or litigation strategy and that political caucuses at the legislature must be open to the public. Certainly all of those functions could be conducted more efficiently in private but the Supreme Court has held that the constitution does not permit private meetings of public agencies. The constitution makes no exception for the Montana Supreme Court.

Finally, I believe that public scrutiny of Supreme Court operations would serve two purposes. When the Court works well, as I believe that it does most of the time, public observation of that fact will reinforce public confidence and make the Court less vulnerable to those who wish to make it a scapegoat for their own political agenda. On the other hand, when the Court or one of its members does not function well, as occasionally happens, the people of Montana would be in a better position to understand and do something about it. Either way the state would be better served than it is by the current cloak of total secrecy surrounding the Supreme Court.

Thank you for considering my comments.

Sincerely,

MELOY TRIEWEILER

By: 
Terry N. Trieweller

TNT:pj

Exhibit No. 3

Date 2-17-05

Bill No. SB 470

Statement of Ed Smith, Clerk of the Supreme Court

Senate Bill 470

I stand before you this morning to strongly support Senate Bill 470. Senate Bill 470 is fair legislation which addresses the problem of Supreme Court conferences not being open to the public, in violation of Article II, Section 9, of the Montana Constitution, Right to know.

I had the privilege of working at the Montana Constitutional Convention in 1972 as a young student. This participation made a great impression on me, and helped form my core belief in the right to know provision of our state constitution.

Over the past 32 years, as we have implemented this model constitution, we have all witnessed how our courts, and in particular the Supreme Court, has expanded this provision to many governmental activities and bodies. Unfortunately the Supreme Court has declined to implement an open government process on themselves. As Senator Harrington has indicated the Supreme Court handles many other matters not related litigation. I believe these other matters fall under the mandate of the open meetings law. I am perplexed to say the least, as to why they believe that they can be the last holdout in implementing this law for themselves. These administrative deliberations should be allowed to be observed. Many important decisions are being made with no notice given and minutes recorded. I can say that for myself and for a number of district court judges we would like to observe the court

conferences when discussions and decisions are being made by the court, that affect our offices. The public is better served when they can observe decisions being made in the open.

As public officials I believe that one of the most significant contributions we can make during our tenures in office is to always strive to strengthen our institutions, whether it is in the judicial, legislative or executive branches of our government. We may all differ on the outcome of our public decisions, whether it be a piece of legislation, an executive decision or an opinion from the court, but we must work harmoniously to ensure that institutional safeguards are in place for the protection of all of us.

This bill is a small incremental step, but one of great significance. I recommend its passage.

Montana State Legislature

Exhibit Number: 2

The following exhibit is several assorted documents that exceeds the 10-page limit therefore it cannot be scanned.

A small portion has been scanned to aid in your research for information. The exhibit is on file at the Montana Historical Society and can be viewed there.

Montana Historical Society Archives, 225 N. Roberts, Helena, MT 59620-1201; phone (406) 444-4774. For minutes in paper format, please contact the Montana State Law Library, Justice Building, 215 N. Sanders, Helena, MT 59620; (406) 444-3660. Tapes and exhibits are also available at the Historical Society (tapes are retained for five years). Scanning done by: Susie Hamilton

IN THE SUPREME COURT OF THE STATE OF MONTANA

IN RE THE SELECTION OF A FIFTH MEMBER)
TO THE MONTANA DISTRICTING) ORDER
AND APPORTIONMENT COMMISSION)

On April 21, 1999, Joe Lamson, Sheila Rice, Elaine Sliter, and Jack Rehberg, members of the Montana Districting and Apportionment Commission informed the Court by letter that they had been unable to select the fifth member and presiding officer of the Commission within the time allowed under Article V, Section 14(2) of the Montana Constitution and Section 5-1-102(1), MCA.

Under Article V, Section 14(2) of the Montana Constitution and § 5-1-102(1), MCA, if the first four designated members of the Commission fail to select the fifth member within the time prescribed, a majority of the Montana Supreme Court shall select the fifth member.

The Court having now considered various recommendations,

IT IS ORDERED that Dr. Janine Pease-Pretty On Top is selected as the fifth member and presiding officer of the Montana Districting and Apportionment Commission.

DATED this 3RD day of August, 1999.

FILED

AUG 03 1999

Ed Smith
CLERK OF SUPREME COURT
STATE OF MONTANA

J. A. Turnage
Chief Justice

Janine Pease-Pretty On Top
Justices

Justice James C. Nelson specially concurs and dissents.

Introduction

I concur with this Court's appointment of Dr. Janine Pease-Pretty On Top to be the fifth member and chairperson of the reapportionment commission. I strongly dissent, however, from the manner in which we have exercised our power of appointment under Article V, Section 14(2) of the Montana Constitution. This entire process of appointment, including all of this Court's deliberations on this matter, should have been open to the public.

In this regard, and as pointed out by the specially concurring Justices, my dissent does not arise from a ruling by this Court in response to an original proceeding or suit to open to the public our deliberations on this matter. Rather, the genesis of my disagreement is the 5-2 rejection of my motion, made before we began our discussions on this appointment, that we conduct our deliberations and make our decision on this particular matter in open sessions. As noted, the more conventional route for raising this issue would have been an adversary proceeding filed in or against this Court. Notwithstanding, in the twenty-seven years since the adoption of the 1972 Constitution, no one has seen fit to file such a challenge. Why, I do not know, but I suspect that the reason for this failure goes more to the politics of not wanting to go head-to-head with the highest court in this State on a controversial issue directly affecting the fundamental way we conduct our business, rather than it does with the merits of the constitutional arguments for and against.

More to the point, however, how this issue was raised is of little consequence. The

fact of the matter is that no one and no organization should have to sue us or even request that we conform our own operations to the clear and unambiguous mandate of the Constitution. As we stated in *Associated Press v. Bd. of Public Educ.* (1991), 246 Mont. 386, 391, 804 P.2d 376, 379, "[f]irst and foremost, is the realization that the Constitution is the supreme law of this State. *Its mandate must be followed by each of the three branches of government.*" [Emphasis added]. Therefore, it is with this mandate that I begin.

Discussion

Article II, Section 9 of the Montana Constitution provides:

Right to know. No person shall be deprived of the right to examine documents *or to observe the deliberations of all public bodies* or agencies of state government and its subdivisions, *except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure.* [Emphasis added.]

My research reveals no Montana case law ruling on the applicability or inapplicability of this constitutional provision to the judicial branch or, more specifically, to the proceedings and deliberations of this Court. Therefore, I turn to the rules of constitutional construction.

In resolving disputes of constitutional construction, this Court applies the rules of statutory construction. Under those rules, the intent of the framers of the Constitution is controlling and that intent must first be determined from the plain language of the words used. *Butte-Silver Bow Local Govern. v. State* (1989), 235 Mont. 398, 403, 768 P.2d 327, 330 (citation omitted). Moreover, under these rules, if the language is clear and unambiguous, no further interpretation is required. *Lovell v. State Comp. Mut. Ins. Fund*

(1993), 260 Mont. 279, 285, 860 P.2d 95, 99 (citation omitted). The courts may not go further and apply any other means of interpretation, *Tongue River Elec. Coop. v. Mont. Power Co.* (1981), 195 Mont. 511, 515, 636 P.2d 862, 864 (citation omitted), nor may a judge insert into a constitutional provision what has been omitted or omit what has been inserted, *see* § 1-2-101, MCA.

Applying these well-settled rules of constitutional construction, it is clear that the plain language of Article II, Section 9, does not exempt this Court from the provision's mandate. Rather, Montana's constitutional "right to know" unambiguously covers the deliberations of *all public bodies of state government*.

Nonetheless, even ignoring the clarity of Article II, Section 9, and the dictates of our constitutional construction jurisprudence, the proceedings of the 1972 Constitutional Convention also lead to the conclusion that the "right to know" requirements do not apply exclusively to the legislative and executive branches of state government and its subdivisions to the exclusion of the judicial branch.

In point of fact, the delegates to the Constitutional Convention amended the language of what became Article II, Section 8 of the Montana Constitution, which gives the public the right to participate in the operations of governmental agencies, on Delegate Berg's motion, so as to exclude the judicial branch. *See* Montana Constitutional Convention, Verbatim Transcript, March 7, 1972, pp. 1663-67 (comments of Delegates Berg, Dahood, and McNeil). Notwithstanding that these same delegates discussed the language of what became Article

II, Section 9 of the Montana Constitution on the same afternoon that they amended the language of what became Article II, Section 8, they did not even discuss amending the language of what became Article II, Section 9, so as to exclude the judicial branch. See Montana Constitutional Convention, Verbatim Transcript, March 7, 1972, pp. 1667-1680.

Delegate Berg, however, subsequently moved to amend the language of what became Article II, Section 9, out of his concern that the phrase "public bodies" could be interpreted to include juries, grand juries, or the deliberations of this Court. Montana Constitutional Convention, Verbatim Transcript, March 16, 1972, pp. 2499-2501. Delegate Dahood stated that he agreed with Delegate Berg and that the committee was "not trying to upset any traditional rule of procedure with respect to anything within the judiciary." Notwithstanding, Delegate Dahood stated that he would not amend the section as Delegate Berg had suggested. Delegate Berg then stated in his closing statement in support of his motion that "my purpose in asking to delete the word[s] 'bodies or' is to eliminate the potential interpretation that it might include juries, grand juries, [or] Supreme Court deliberations." Montana Constitutional Convention, Verbatim Transcript, March 16, 1972, p. 2501. Despite Delegate Berg's concerns, his motion failed. Montana Constitutional Convention, Verbatim Transcript, March 16, 1972, p. 2501.

Thus, even though Delegate Berg expressed the same concern with regard to what became Article II, Section 8, and what became Article II, Section 9, the delegates amended only the language of what became Article II, Section 8, so as to exclude the judicial branch.

More to the point, the delegates declined to amend the language of what became Article II, Section 9, so as to exclude the judicial branch even though faced with the same concern that prompted them to amend what became Article II, Section 8.

Hence, not only the plain language but also the constitutional history of these companion provisions of the Montana Constitution show that Article II, Section 9, is broader than Article II, Section 8. Article II, Section 9, gives the public the right to *observe* the deliberations of *all public bodies* and agencies while Article II, Section 8, gives the public the right to *participate* only in the operations of *agencies*. That, of course, begs the question whether this Court is a "public body." The answer to this question is undeniably "yes."

In *Common Cause v. Statutory Committee* (1994), 263 Mont. 324, 329, 868 P.2d 604, 607, we noted that the rights which Article II, Section 9, guarantees are protected and implemented primarily through Montana's open meeting statutes, codified at §§ 2-3-201, *et seq.*, MCA. One of these statutes, § 2-3-203(1), MCA, provides:

All meetings of *public or governmental bodies*, boards, bureaus, commissions, agencies of the state, or any political subdivision of the state or organizations or agencies supported in whole or in part by public funds or expending public funds must be open to the public. [Emphasis added.]

In *Common Cause*, we recognized that the legislature did not define "public body" or "governmental body" in the open meeting statutes. *Common Cause*, 263 Mont. at 330, 868 P.2d at 608. Thus, we gave the words in these phrases their "plain, ordinary and usual meaning" and stated that "the common understanding of the phrase 'public or governmental body' would include a group of individuals organized for a governmental or public purpose."

Common Cause, 263 Mont. at 330, 868 P.2d at 608 (citations omitted). There can be no doubt, this Court is a group of individuals organized by and under the Montana Constitution for a governmental purpose. It follows, then, that this Court is a public or governmental body.

Similarly, in *Great Falls Tribune Co., Inc. v. Day*, 1998 MT 133, ¶ 16, 289 Mont. 155, ¶ 16, 959 P.2d 508, ¶ 16, this Court, in determining whether the Department of Corrections Committee for Private Prison Screening and Evaluation was a “public body,” looked to the Montana Procurement Act, which defines “governmental body” as

a department, commission, council, board, bureau, committee, institution, legislative body, agency, government corporation, or other entity, instrumentality, or official of the executive, legislative, or *judicial branch* of this state, including the board of regents and the Montana university system.

Section 18-4-123(11), MCA (emphasis added). We stated that, since the committee was a committee of the executive branch of government, and a “governmental body” for purposes of procurement, “it necessarily follows that it is an agency of state government to which Article II, Section 9, applies.” *Great Falls Tribune*, ¶ 17. This Court is clearly an “entity . . . of the . . . judicial branch of this state,” and, therefore, a “governmental body.” Section 18-4-123(11), MCA. Thus, it “necessarily follows” that this Court is a “public body” to which Article II, Section 9, applies. *Great Falls Tribune*, ¶ 17.

The same conclusion can be drawn from our decision in *Becky v. Butte-Silver Bow Sch. Dist. 1* (1995), 274 Mont. 131, 906 P.2d 193. In *Becky*, this Court, in determining whether the records of an organization were “documents of public bodies,” looked to § 2-6-

101(2)(a), MCA, which states that "public writings" are

the written acts or records of the acts of the sovereign authority, of official bodies and tribunals, and of public officers, legislative, *judicial*, and executive, whether of this state, of the United States, of a sister state, or of a foreign country;

Becky, 274 Mont. at 137, 906 P.2d at 197 (quoting § 2-6-101(2)(a), MCA) (emphasis added).

Section 2-6-101, MCA, also states that there are four classes of public writings and that "judicial records" are one of the classes. Section 2-6-101(3)(b), MCA. Finally, although we recognized that "documents of public bodies" is not defined in the Montana Constitution, we stated that "it must reasonably be held to mean documents generated or maintained by a public body which are somehow related to the function and duties of that body." *Becky*, 274 Mont. at 138, 906 P.2d at 197.

Applying the definition of "public writings" found in § 2-6-101(2)(a), MCA, it is clear that most, if not all, of the documents which this Court generates and maintains are "public writings," and, therefore, are "documents of a public body." Thus, since the documents which this Court generates and maintains are "documents of a public body," it follows (perhaps backwardly) that this Court is a "public body" to which Article II, Section 9, applies.

As these cases demonstrate, this Court has been particularly vigilant and uncompromising in protecting Montanans' constitutional "right to know" and in rejecting other governmental bodies' attempts to limit or subvert this right. In *Great Falls Tribune*, for example, the committee argued that the public's right to observe its meetings with private

companies which had submitted proposals to build a private correctional facility in Montana and to review the papers associated with the companies' proposals was outweighed by the companies' right to privacy in the information that they had submitted. *Great Falls Tribune*, ¶ 8. We held, however, that the *Great Falls Tribune* had a constitutional right under Article II, Section 9, to observe the committee's deliberations and to examine the committee's documents, including proposals that had been submitted to it. *Great Falls Tribune*, ¶ 33. We also stated that the only exception to the public's right to observe the committee's deliberations and documents concerned information to which the companies had a privacy interest. *Great Falls Tribune*, ¶ 33.

In sum, and based on the foregoing, if there exists some valid argument for exempting the deliberations and decision-making processes of this Court from the operation of Article II, Section 9, the rationale is neither apparent in the tenor of our prior jurisprudence nor, more importantly, in the plain language of the constitutional provision itself or in the history of its adoption.

And, with regard to the latter, while the concurring Justices read the Constitutional Convention history of Article II, Section 9, a great deal more restrictively than I do, nevertheless that history--and our disagreement over what it means--is largely academic. For, as we made eminently clear in *Associated Press*,

[t]he language of [Article II, Section 9] speaks for itself. It applies to all persons and all public bodies of the state and its subdivisions without exception. Under such circumstances, it is our duty to interpret the intent of the framers from the language of the provision alone and not to resort to

extrinsic aids or rules of construction in determining the intent of the delegates to the Constitutional Convention.

Associated Press, 246 Mont. at 392, 804 P.2d at 379 (quoting *Great Falls Tribune v. District Court* (1980), 186 Mont. 433, 437-38, 608 P.2d 116, 119.

Similarly irrelevant are the concurring Justices' concerns as to the impact of complying with Article II, Section 9, on the operations and functioning of this Court. In this regard, I make three observations. First, since we are bound by the "right to know" provision of the Constitution of Montana, we, and litigants, will simply have to deal with the consequences and changes that flow from opening our deliberations and operate accordingly. Other public bodies of state government seem to be able to comply with the requirements of Article II, Section 9, and, yet, function quite well. I find it difficult to believe that, given the caliber of the justices serving on this Court, that we are not, likewise, up to the task. Likewise, I refuse to be cowed by the concurrences' parade of horrors--internal memos and proposed opinions being made public, media blitzes, masses of the unwashed converging upon the Court, cases settling, criminals jumping bail. Good grief! If, before a final opinion is handed down, litigants want to settle, jump bail or jump off a bridge, for that matter, they can, and often do that now. If votes change between the time of initial discussion and final opinion, then those who acted prematurely will have to bear the consequences of their bad or good decision.

Second, in my experience, every public body that has been faced with the prospect of opening its operations to the press and public has put forth a whole list of problems and

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DIANE RICE**, on March 23, 2005 at 8:00 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Diane Rice, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Ron Stoker, Vice Chairman (R)
Rep. Arlene Becker (D)
Rep. Robyn Driscoll (D)
Rep. George Everett (R)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Roger Koopman (R)
Rep. Michael Lange (R)
Rep. Tom McGillvray (R)
Rep. Mark E. Noennig (R)
Rep. Art Noonan (D)
Rep. John Parker (D)
Rep. Jon Sonju (R)
Rep. John Ward (R)
Rep. Bill Wilson (D)
Rep. Jeanne Windham (D)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Pam Schindler, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 447, 452, 468, 470, SJR 6,
HB 794, 3/16/2005
Executive Action: None

HEARING ON SB 468

Sponsor: SEN. JEFF MANGAN, SD 12, GREAT FALLS

Opening Statement by Sponsor:

SEN. JEFF MANGAN (D), SD 12, opened the hearing on **SB 468**, Revise law on temporary restraining orders (TROs). **SEN. MANGAN** explained the bill to the committee members regarding a youth that receives a TRO and the ramifications for that youth to participate in school activities.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 39}

Proponents' Testimony:

Debra Silk, Chief Counsel, Montana School Boards Association, spoke to the committee about the situation where a school may try to suspend a youth from school and that the parents may try to intervene in the process referencing 27-19-315, MCA.

{Tape: 1; Side: A; Approx. Time Counter: 39 - 63}

Kathy Brammer, Office of Public Instruction (OPI), explained to the committee that this bill is about, "fairness." She related a story about the Miles City wrestlers who had received TRO's and the impact that had on another school's participation in that school's planned activities.

{Tape: 1; Side: A; Approx. Time Counter: 63 - 111}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. NOENNIG began his questions to Ms. Silk regarding the situation where more groups would request TROs and the issue of "conflicting statements regarding notice to be given." **Ms. Silk** spoke about the schools all knowing the rules beforehand regarding forfeitures of games, etc.

{Tape: 1; Side: A; Approx. Time Counter: 111 - 176}

Closing by Sponsor:

SEN. MANGAN closed the hearing on SB 468.

{Tape: 1; Side: A; Approx. Time Counter: 176 - 185}

HEARING ON SB 470

Sponsor: SEN. DAN HARRINGTON, SD 38, BUTTE

Opening Statement by Sponsor:

SEN. DAN HARRINGTON (D), SD 38, opened the hearing on **SB 470**, Certain supreme court meetings to be open. **SEN. HARRINGTON** spoke to the committee about Article 2, Section 9 regarding open meetings. The SENATOR continued his dialogue regarding his participation as a delegate to the Montana Constitutional Congress in 1972.

He stated that the Montana Supreme Court does not think they are subject to the same rules as the other branches of government regarding open meetings and that SB 470 would mandate that the Supreme Court of Montana would need to adhere to the same open meetings criteria.

{Tape: 1; Side: A; Approx. Time Counter: 185 - 273}

Proponents' Testimony:

Ed Smith, clerk-Montana Supreme Court, rose in support of SB 470 and stated that he had requested SEN. HARRINGTON to bring forth this bill. He spoke to the committee about the recent opening of a small segment of the Supreme Court's meetings; but also stated that there is no guarantee that those proceedings will remain open.

Mr. Smith continued to speak to the committee about the lack of documentation from meetings and that no formal entries from some of those meetings are recorded, etc.

EXHIBIT(juh64a01)

EXHIBIT(juh64a02)

{Tape: 1; Side: A; Approx. Time Counter: 273 - 415}

Colin Stephens, Montana Newspaper Association, rose in support of SB 470 and spoke to the committee about the lack of a formal mandate to require the Montana Supreme Court meetings to be open.

{Tape: 1; Side: A; Approx. Time Counter: 415 - 442}

Jim Fall, Executive Director, Montana Newspaper Association, rose in support and spoke to the committee about a letter he had recently written to Chief Justice Gray.

{Tape: 1; Side: A; Approx. Time Counter: 442 - 469}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

SEN. HARRINGTON closed the hearing on SB 470 and stated, "this will put into law what should be in the law."

{Tape: 1; Side: A; Approx. Time Counter: 469 - 500}

HEARING ON SB 447

Sponsor: SEN. JON ELLINGSON, SD 49, MISSOULA

Opening Statement by Sponsor:

SEN. JON ELLINGSON (D), SD 49, opened the hearing on SB 447, Revise initiative and referendum process. SEN. ELLINGSON spoke to the committee members about the ballot review process and the delays in the judicial review process regarding counting ballots.

SEN. ELLINGSON informed the committee that SB 447 was requested by the Attorney General's Office.

{Tape: 1; Side: B; Approx. Time Counter: 0 - 70}

Proponents' Testimony:

Pam Bucy, Assistant Attorney General (AG), rose in support of SB 447 and distributed an amendment to the committee.

[EXHIBIT\(juh64a03\)](#)

[EXHIBIT\(juh64a04\)](#)

{Tape: 1; Side: B; Approx. Time Counter: 70 - 84}

Anthony Johnstone, Assistant Attorney General, rose in support of SB 447 and informed the committee that he is in charge of the election review process within the AG's office. Mr. Johnstone explained to the committee the fundamentals of the election review process and gave examples of some issues that may arise during this process.

Mr. Johnstone also explained to the committee the amendment and how the amendment would leave the determination to the courts, but would provide information to the voters. The amendment would also not allow argumentative language to be included; however, would allow preambles that are not argumentative to be included.

The challenges for fraudulent numbers in petition signatures would also be addressed.

{Tape: 1; Side: B; Approx. Time Counter: 84 - 195}

Ronda Carpenter-Wiggins, self, spoke in support of SB 447 with the amendments and stated that she works on ballot initiatives and has a first hand knowledge of the balloting process.

{Tape: 1; Side: B; Approx. Time Counter: 195 - 279}

Opponents' Testimony:

Mark Mackin, self, rose in opposition to SB 447 and informed the committee that he has done work on the initiative process and laws for many years. **Mr. Mackin** stated, "...with the AG's amendment, [I] would withdraw [my] opposition to SB 447...."

{Tape: 1; Side: B; Approx. Time Counter: 279 - 311}

Informational Testimony:

Michael O'Brien, Secretary of States Office, spoke to the committee about the current law that requires the AG's office to seek public comment and/or notice and therein is the problem; who the public comment should be sought from.

{Tape: 1; Side: B; Approx. Time Counter: 311 - 347}

Questions from Committee Members and Responses:

REP. NOENNIG spoke with Mr. Johnstone as to who is entitled to a challenge and where is it in the amendment. **Mr. Johnstone** replied that it is at the top of the Page 1 and then proceeded to explain the "dueling" initiatives.

REP. NOENNIG then referred to Ms. Carpenter-Wiggins about the signature gathering language.

REP. CLARK questioned Mr. Johnstone about the language in Amendment B regarding the Secretary of State and the "public notice" provision. They continued their discussion about the number of votes and the review process.

REP. CLARK queried the sponsor to explain the role of the Supreme Court in SB 447.

REP. RICE began her questions to Ms. Carpenter-Wiggins. The REPRESENTATIVE was interested in the elimination of the District Courts in these types of proceedings.

Ms. Carpenter-Wiggins explained that all decisions will "wind up" in the Supreme Court and this would save the courts money. **REP. RICE** then inquired about the elimination of a second opinion for the Supreme Court's consideration; i.e., the District Court opinion. **Ms. Carpenter-Wiggins** replied that the Supreme Court would eliminate the other opinion regardless.

REP. STOKER spoke with Mr. Johnstone about Amendment D, "contested signatures," and whether or not that could be challenged in District Court. **Mr. Johnstone** stated that the District Court would involve the findings of fact, whereas, the Supreme Court cannot do that.

REP. GUTSCHE continued with questions for Mr. Johnstone regarding the language that would allow the problems to be addressed earlier and the gathering of signatures.

{Tape: 1; Side: B; Approx. Time Counter: 347 - 500}

{Tape: 2; Side: A; Approx. Time Counter: 0 - 240}

Closing by Sponsor:

SEN. ELLINGSON closed the hearing on SB 447 and informed the committee that he would be amenable to the amendments and that this bill would streamline what the Supreme Court accomplishes.

HEARING ON SB 485

Sponsor: **SEN. JON ELLINGSON, SD 49, MISSOULA**

Opening Statement by Sponsor:

SEN. JON ELLINGSON (D), SD 49, opened the hearing on **SB 485**, Establish next-of-kin registry. **SEN. ELLINGSON** explained to the committee members that the registry would be held at the AG's Office at a 24-hour accessible web site. This registry would be optional for people without living wills, durable power of attorneys or advanced directives.

EXHIBIT(juh64a05)

{Tape: 2; Side: A; Approx. Time Counter: 240 - 315}

Proponents' Testimony:

Anita Roessmann, Montana Advocacy Program, rose in support and stated that SB 485, "may restore some dignity to some folks." She stated, "...people with disabilities tend to be unmarried and with no children; this bill would allow them to plan for the future...."

EXHIBIT(juh64a06)

{Tape: 2; Side: A; Approx. Time Counter: 315 - 366}

Jessica Grennan, Associated Students of the University of Montana, rose in support of SB 485. She stated that this bill may also relate to students who are away from home with families far away.

{Tape: 2; Side: A; Approx. Time Counter: 366 - 391}

Barb Allen, PRIDE, rose in support and spoke about the unique circumstances as to the "next-of-kin."

{Tape: 2; Side: A; Approx. Time Counter: 391 - 419}

Andrew Huff, ACLU, stated that this is a common sense bill.

{Tape: 2; Side: A; Approx. Time Counter: 419 - 429}

Eric Schiedermayer, Montana Catholic Conference of Bishops, stood in support of SB 485 and said this is a next-of-kin registry, not "akin" to marriage and that this is a registry that could benefit many.

{Tape: 2; Side: A; Approx. Time Counter: 429 - 489}

Ali Bovington, Assistant Attorney General, rose in support of SB 485 and stated that with this bill, "...people would be able to deal with the end of life issues...."

{Tape: 2; Side: A; Approx. Time Counter: 489 - 500}

Terry Kendricks, Montana Human Rights Network, rose in support of SB 485.

{Tape: 2; Side: B; Approx. Time Counter: 0 - 10}

Charles Briggs, Montana Association of Independent Disability Services, rose in support of SB 485.

{Tape: 2; Side: B; Approx. Time Counter: 10 - 14}

Opponents' Testimony: None

Informational Testimony:

David Westlake, St. James Healthcare, spoke to the durable power of attorney.

{Tape: 2; Side: B; Approx. Time Counter: 14 - 34}

Mike Mahoney, Warden, Department of Corrections, rose and spoke to the committee about inmates that can already add next-of-kin registries to their files. **Mr. Mahoney** expressed concern that the inmates may manipulate the provisions in this bill by requesting that the next-of-kin be allowed to visit inmates while in a hospital.

{Tape: 2; Side: B; Approx. Time Counter: 34 - 60}

Questions from Committee Members and Responses:

REP. NOONAN spoke with the sponsor about the rules regarding conflicts within the persons who may have been named the next-of-kin. **SEN. ELLINGSON** stated that the registry would clarify one next-of-kin over the other.

REP. NOENNIG questioned the sponsor about the revocation of one designate over another; with the sponsor replying that is addressed in Section 4 and he would be amenable to an amendment if needed.

REP. STOKER asked **SEN. ELLINGSON** what the definition of next-of-kin is. The SENATOR replied that this is for the registry only.

REP. WARD then queried the sponsor about the registry as it relates to a of power of attorney form. The sponsor replied that this would be a statewide registry.

REP. MCGILLVRAY questioned **SEN. ELLINGSON** about the new advanced directives to be addressed in this bill and if it would be cheaper for people with this new registry. The SENATOR stated that it would be cheaper, with **REP. MCGILLVRAY** commenting, "...it would be cheaper at the taxpayer expense."

REP. SONJU spoke with the sponsor about the new Section 5 regarding an out of state incident and if other states would recognize this registry. **SEN. ELLINGSON** stated that a power of attorney "trumps" the registry. The REPRESENTATIVE discussed with Ms. Bovington the costs that would be incurred by an individual.

REP. NOENNIG was interested in the other states that have a next-of-kin registry. **SEN. ELLINGSON** replied that California has the registry.

REP. CLARK spoke with Ms. Bovington about the benefits of this registry versus current law. **Ms. Bovington** replied that this bill would make this available for all Montanans and there is nothing presently that would be easier.

{Tape: 2; Side: B; Approx. Time Counter: 60 - 500}

{Tape: 3; Side: A; Approx. Time Counter: 0 - 225}

Closing by Sponsor:

SEN. ELLINGSON closed the hearing on SB 485 and reminded the committee that there were no opponents to this bill.

{Tape: 3; Side: A; Approx. Time Counter: 225 - 237}

HEARING ON SB 452

Sponsor: **SEN. GARY PERRY, SD 35, MANHATTAN**

Opening Statement by Sponsor:

SEN. GARY PERRY (R), SD 35, opened the hearing on **SB 452**, Penalty for violation of no contact order. **SEN. PERRY** explained the bill to the committee members.

{Tape: 3; Side: A; Approx. Time Counter: 237 - 390}

Proponents' Testimony:

Judy Wang, Missoula City Attorney, spoke in support of SB 452.

EXHIBIT (juh64a07)

{Tape: 3; Side: A; Approx. Time Counter: 390 - 422}

Gregg Willoughby, Lieutenant, Missoula City Police, rose in support of SB 452.

{Tape: 3; Side: B; Approx. Time Counter: 0 - 71}

Deborah Brennan, self, spoke to the committee in support of SB 452 and related her own story as an abused wife to the committee members.

{Tape: 3; Side: B; Approx. Time Counter: 71 - 104}

Ali Bovington, Assistant Attorney General, rose in support of SB 452.

{Tape: 3; Side: B; Approx. Time Counter: 104 - 119}

Leslie McClintock, Missoula Office of Planning and Grants, crime victim advocate, rose in support of SB 452 and spoke to the committee about the victims who continue to have a relationship with their domestic violence perpetrators. **Ms. McClintock** also spoke of the level of fear the victims have that is hard for them to express.

{Tape: 3; Side: B; Approx. Time Counter: 119 - 156}

Ethan Leman, Montana Legal Services, spoke to the committee in support of SB 452 and said, "...with the repeat victims and the repeat offenders, any additional layer is significant."

{Tape: 3; Side: B; Approx. Time Counter: 156 - 181}

Nanette Smith, Montana County Attorneys Association, rose in support of SB 452.

{Tape: 3; Side: B; Approx. Time Counter: 181 - 186}

Matthew Dale, Department of Justice, rose in support of SB 452.

{Tape: 3; Side: B; Approx. Time Counter: 186 - 194}

Tootie Welker, self, spoke in support of SB 452.

[EXHIBIT\(juh64a08\)](#)

{Tape: 3; Side: B; Approx. Time Counter: 194 - 224}

Helen Schmidt, Coalition Against Domestic Violence, Richland County, rose in support of SB 452.

{Tape: 3; Side: B; Approx. Time Counter: 224 - 231}

Susan Hanson, Domestic Violence Emergency Services, Polson, rose in support of SB 452.

{Tape: 3; Side: B; Approx. Time Counter: 231 - 238}

Kate Cholewa, Montana Coalition Against Domestic and Sexual Violence, rose in support of SB 452.

{Tape: 3; Side: B; Approx. Time Counter: 238 - 245}

Maura Costea, Missoula County Crime Victim Advocates, rose in support of SB 452.

{Tape: 3; Side: B; Approx. Time Counter: 245 - 252}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. NOENNIG spoke with Ms. Wang at length about what SB 452 may accomplish and asked Ms. Wang to describe how the procedure progresses once a violent incident occurs. The REPRESENTATIVE referred to Page 1, Lines 25-26.

REP. MCGILLVRAY spoke with the sponsor about the amendment in reference to the 72 hour rule.

REP. CLARK began his questions to Ms. Wang about Page 1, Lines 28-29 regarding the 48 hours language versus the 72 hour language.

REP. WARD spoke with Ms. Wang about a friendly amendment for Page 1, Lines 27-29.

{Tape: 3; Side: B; Approx. Time Counter: 252 - 500}

{Tape: 4; Side: A; Approx. Time Counter: 0 - 85}

Closing by Sponsor:

SEN. PERRY closed the hearing on SB 452 and spoke to the committee about an incident close to his home in Bozeman,
{Tape: 4; Side: A; Approx. Time Counter: 85 - 104}

HEARING ON SJ 6

Sponsor: SEN. MICHAEL WHEAT, SD 32, BOZEMAN

Opening Statement by Sponsor:

SEN. MIKE WHEAT (D), SD 32, opened the hearing on **SJ 6**, Study legal services for low and moderate income Montanans. **SEN. WHEAT** read some of the resolution to the committee members and requested an amendment on the Family Treatment Courts.

{Tape: 4; Side: A; Approx. Time Counter: 104 - 180}

Proponents' Testimony:

Ali Bovington, Assistant Attorney General, spoke in support of SJ 6 and stated, "...this is about equal justice for the most vulnerable."

{Tape: 4; Side: A; Approx. Time Counter: 180 - 208}

Klaus Sitte, Montana Legal Services, rose in support of SJ 6 and explained the exhibit that was distributed to the committee. He stated that SJ 6 is about, "...the role of Montana in securing equal access to justice...."

EXHIBIT(juh64a09)

{Tape: 4; Side: A; Approx. Time Counter: 208 - 282}

Ann Gilkey, State Bar Association, rose in support of SJ 6 and spoke to the committee about the Legal Needs Study that has been accomplished recently.

EXHIBIT(juh64a10)

{Tape: 4; Side: A; Approx. Time Counter: 282 - 333}

Kim Abbott, Working for Equality and Economic Liberation (WEEL), rose in support of SJ 6 and stated that this is the first step of many steps.

{Tape: 4; Side: A; Approx. Time Counter: 333 - 362}

Beth Baker, attorney, Access to Justice Committee, rose in support of SJ 6.

{Tape: 4; Side: A; Approx. Time Counter: 362 - 390}

Kate Cholewa, Montana Coalition Against Domestic and Sexual Violence, rose in support of SJ 6.

{Tape: 4; Side: A; Approx. Time Counter: 390 - 398}

Donna Goff, self, spoke to the committee about her own story regarding the Self Help Law Project.

{Tape: 4; Side: A; Approx. Time Counter: 398 - 468}

Helen Schmidt, Coalition Against Domestic Violence, Richland County, rose in support of SJ 6.

{Tape: 4; Side: A; Approx. Time Counter: 468 - 493}

Eric Shiedermayer, Montana Catholic Conference of Bishops, rose in support of SJ 6.

{Tape: 4; Side: A; Approx. Time Counter: 493 - 500}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. MCGILLVRAY spoke with Ms. Gilkey about the information from her that was distributed to the committee members.

{Tape: 4; Side: B; Approx. Time Counter: 0 - 13}

Closing by Sponsor:

SEN. WHEAT closed the hearing on SJ 6 and stated that an amendment would be drafted.

{Tape: 4; Side: B; Approx. Time Counter: 13 - 25}

At the conclusion of the hearing, there was some discussion by the committee regarding SB 139 that was **tabled** previously.

ADJOURNMENT

Adjournment: 12:00 P.M.

REP. DIANE RICE, Chairman

PAM SCHINDLER, Secretary

DR/ps

Additional Exhibits:

EXHIBIT ([juh64aad0.PDF](#))

The Bluestone
80 South Warren, P.O. Box 1241
Helena, MT 59624
T 406-442-8670 F 406-442-4953

PETER MICHAEL MELOY
TERRY N. TRIEWEILER
JENNIFER S. HENDRICKS
BRIAN C. BRAMBLETT

email for Terry Trieweiler
pmjohnston@qwest.net

March 15, 2005

Rep. Diane Rice, Chairman
House Judicial Committee
State Capitol
Helena, MT 59620

Re: Senate Bill 470

Dear Committee Members:

Please accept the following remarks in support of Senate Bill 470.

Few people are aware that in addition to deciding cases the Montana Supreme Court has many important administrative responsibilities that are indistinguishable from those performed by the other two branches of government. The Supreme Court:

1. Administers the practice of law by deciding standards for admission and discipline of lawyers;
2. Enacts personnel policies for the entire state judiciary;
3. Administers the budget for the state judiciary;
4. Adopts rules of evidence and rules for practice in Montana's Courts;
5. Appoints members to numerous judicial commissions including the Board of Bar Examiners, Commission on Practice, Commission on Technology, District Court Council, and the Judicial Standards Commission which is charged with disciplining judges throughout the state.

In addition, the Montana Supreme Court performs purely political functions such as appointing members to the Judicial Nominating Commission and when necessary appointing the tie-breaking member to the Reapportionment Commission.

After serving 12-1/2 years on the Supreme Court I believe there's no practical reason why these responsibilities can't be subject to the same public scrutiny applied to other governmental agencies. More importantly, I believe that is what the constitution requires.

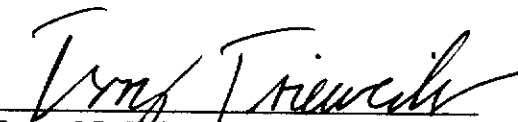
While the argument can and has been made that the Court can operate more efficiently without public scrutiny, that argument has been repeatedly made and rejected by the Court when applied to other public officials. The courts in this state have held that local government cannot conduct private meetings to discuss collective bargaining strategy or litigation strategy and that political caucuses at the legislature must be open to the public. Certainly all of those functions could be conducted more efficiently in private but the Supreme Court has held that the constitution does not permit private meetings of public agencies. The constitution makes no exception for the Montana Supreme Court.

Finally, I believe that public scrutiny of Supreme Court operations would serve two purposes. When the Court works well, as I believe that it does most of the time, public observation of that fact will reinforce public confidence and make the Court less vulnerable to those who wish to make it a scapegoat for their own political agenda. On the other hand, when the Court or one of its members does not function well, as occasionally happens, the people of Montana would be in a better position to understand and do something about it. Either way the state would be better served than it is by the current cloak of total secrecy surrounding the Supreme Court.

Thank you for considering my comments.

Sincerely,

MELOY TRIEWEILER

By: 
Terry N. Triewiler

TNT:pj

Exhibit Number: 2

This exhibit is a petition, which contains several pages of Montanans' addresses and signatures. The petition exceeds the maximum number of pages for scanning. Four pages have been scanned for your research. The original exhibit is on file at the Montana Historical Society and may be viewed there.

IN THE SUPREME COURT OF THE STATE OF MONTANA

IN RE THE SELECTION OF A FIFTH MEMBER)
TO THE MONTANA DISTRICTING) ORDER
AND APPORTIONMENT COMMISSION)

On April 21, 1999, Joe Lamson, Sheila Rice, Elaine Sliter, and Jack Rehberg, members of the Montana Districting and Apportionment Commission informed the Court by letter that they had been unable to select the fifth member and presiding officer of the Commission within the time allowed under Article V, Section 14(2) of the Montana Constitution and Section 5-1-102(1), MCA.

Under Article V, Section 14(2) of the Montana Constitution and § 5-1-102(1), MCA, if the first four designated members of the Commission fail to select the fifth member within the time prescribed, a majority of the Montana Supreme Court shall select the fifth member.

The Court having now considered various recommendations,

IT IS ORDERED that Dr. Janine Pease-Pretty On Top is selected as the fifth member and presiding officer of the Montana Districting and Apportionment Commission.

DATED this 3RD day of ~~July~~ ^{August}, 1999.

FILED

AUG 03 1999

Cl. Smith
CLERK OF SUPREME COURT
STATE OF MONTANA

J. A. Turnage
Chief Justice

Jim Beggs

Prof. Trivelpiece

William E. Hunter

Karla M. May

W. William Bergant

Justices

Justice James C. Nelson specially concurs and dissents.

Introduction

I concur with this Court's appointment of Dr. Janine Pease-Pretty On Top to be the fifth member and chairperson of the reapportionment commission. I strongly dissent, however, from the manner in which we have exercised our power of appointment under Article V, Section 14(2) of the Montana Constitution. This entire process of appointment, including all of this Court's deliberations on this matter, should have been open to the public.

In this regard, and as pointed out by the specially concurring Justices, my dissent does not arise from a ruling by this Court in response to an original proceeding or suit to open to the public our deliberations on this matter. Rather, the genesis of my disagreement is the 5-2 rejection of my motion, made before we began our discussions on this appointment, that we conduct our deliberations and make our decision on this particular matter in open sessions. As noted, the more conventional route for raising this issue would have been an adversary proceeding filed in or against this Court. Notwithstanding, in the twenty-seven years since the adoption of the 1972 Constitution, no one has seen fit to file such a challenge. Why, I do not know, but I suspect that the reason for this failure goes more to the politics of not wanting to go head-to-head with the highest court in this State on a controversial issue directly affecting the fundamental way we conduct our business, rather than it does with the merits of the constitutional arguments for and against.

More to the point, however, how this issue was raised is of little consequence. The

fact of the matter is that no one and no organization should have to sue us or even request that we conform our own operations to the clear and unambiguous mandate of the Constitution. As we stated in *Associated Press v. Bd. of Public Educ.* (1991), 246 Mont. 386, 391, 804 P.2d 376, 379, "[f]irst and foremost, is the realization that the Constitution is the supreme law of this State. *Its mandate must be followed by each of the three branches of government.*" [Emphasis added]. Therefore, it is with this mandate that I begin.

Discussion

Article II, Section 9 of the Montana Constitution provides:

Right to know. No person shall be deprived of the right to examine documents *or to observe the deliberations of all public bodies* or agencies of state government and its subdivisions, *except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure.* [Emphasis added.]

My research reveals no Montana case law ruling on the applicability or inapplicability of this constitutional provision to the judicial branch or, more specifically, to the proceedings and deliberations of this Court. Therefore, I turn to the rules of constitutional construction.

In resolving disputes of constitutional construction, this Court applies the rules of statutory construction. Under those rules, the intent of the framers of the Constitution is controlling and that intent must first be determined from the plain language of the words used. *Butte-Silver Bow Local Govern. v. State* (1989), 235 Mont. 398, 403, 768 P.2d 327, 330 (citation omitted). Moreover, under these rules, if the language is clear and unambiguous, no further interpretation is required. *Lovell v. State Comp. Mut. Ins. Fund*

(1993), 260 Mont. 279, 285, 860 P.2d 95, 99 (citation omitted). The courts may not go further and apply any other means of interpretation, *Tongue River Elec. Coop. v. Mont. Power Co.* (1981), 195 Mont. 511, 515, 636 P.2d 862, 864 (citation omitted), nor may a judge insert into a constitutional provision what has been omitted or omit what has been inserted, *see* § 1-2-101, MCA.

Applying these well-settled rules of constitutional construction, it is clear that the plain language of Article II, Section 9, does not exempt this Court from the provision's mandate. Rather, Montana's constitutional "right to know" unambiguously covers the deliberations of *all public bodies of state government*.

Nonetheless, even ignoring the clarity of Article II, Section 9, and the dictates of our constitutional construction jurisprudence, the proceedings of the 1972 Constitutional Convention also lead to the conclusion that the "right to know" requirements do not apply exclusively to the legislative and executive branches of state government and its subdivisions to the exclusion of the judicial branch.

In point of fact, the delegates to the Constitutional Convention amended the language of what became Article II, Section 8 of the Montana Constitution, which gives the public the right to participate in the operations of governmental agencies, on Delegate Berg's motion, so as to exclude the judicial branch. *See* Montana Constitutional Convention, Verbatim Transcript, March 7, 1972, pp. 1663-67 (comments of Delegates Berg, Dahood, and McNeil). Notwithstanding that these same delegates discussed the language of what became Article

II, Section 9 of the Montana Constitution on the same afternoon that they amended the language of what became Article II, Section 8, they did not even discuss amending the language of what became Article II, Section 9, so as to exclude the judicial branch. *See* Montana Constitutional Convention, Verbatim Transcript, March 7, 1972, pp. 1667-1680.

Delegate Berg, however, subsequently moved to amend the language of what became Article II, Section 9, out of his concern that the phrase "public bodies" could be interpreted to include juries, grand juries, or the deliberations of this Court. Montana Constitutional Convention, Verbatim Transcript, March 16, 1972, pp. 2499-2501. Delegate Dahood stated that he agreed with Delegate Berg and that the committee was "not trying to upset any traditional rule of procedure with respect to anything within the judiciary." Notwithstanding, Delegate Dahood stated that he would not amend the section as Delegate Berg had suggested. Delegate Berg then stated in his closing statement in support of his motion that "my purpose in asking to delete the word[s] 'bodies or' is to eliminate the potential interpretation that it might include juries, grand juries, [or] Supreme Court deliberations." Montana Constitutional Convention, Verbatim Transcript, March 16, 1972, p. 2501. Despite Delegate Berg's concerns, his motion failed. Montana Constitutional Convention, Verbatim Transcript, March 16, 1972, p. 2501..

Thus, even though Delegate Berg expressed the same concern with regard to what became Article II, Section 8, and what became Article II, Section 9, the delegates amended only the language of what became Article II, Section 8, so as to exclude the judicial branch.

More to the point, the delegates declined to amend the language of what became Article II, Section 9, so as to exclude the judicial branch even though faced with the same concern that prompted them to amend what became Article II, Section 8.

Hence, not only the plain language but also the constitutional history of these companion provisions of the Montana Constitution show that Article II, Section 9, is broader than Article II, Section 8. Article II, Section 9, gives the public the right to *observe* the deliberations of *all public bodies* and agencies while Article II, Section 8, gives the public the right to *participate* only in the operations of *agencies*. That, of course, begs the question whether this Court is a "public body." The answer to this question is undeniably "yes."

In *Common Cause v. Statutory Committee* (1994), 263 Mont. 324, 329, 868 P.2d 604, 607, we noted that the rights which Article II, Section 9, guarantees are protected and implemented primarily through Montana's open meeting statutes, codified at §§ 2-3-201, *et seq.*, MCA. One of these statutes, § 2-3-203(1), MCA, provides:

All meetings of *public or governmental bodies*, boards, bureaus, commissions, agencies of the state, or any political subdivision of the state or organizations or agencies supported in whole or in part by public funds or expending public funds must be open to the public. [Emphasis added.]

In *Common Cause*, we recognized that the legislature did not define "public body" or "governmental body" in the open meeting statutes. *Common Cause*, 263 Mont. at 330, 868 P.2d at 608. Thus, we gave the words in these phrases their "plain, ordinary and usual meaning" and stated that "the common understanding of the phrase 'public or governmental body' would include a group of individuals organized for a governmental or public purpose."

HOUSE OF REPRESENTATIVES
Roll Call
JUDICIARY COMMITTEE

DATE March 23, 05

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT</u>	<u>EXCUSED</u>
REP. DIANE RICE, CHAIR	X		
REP. RON STOKER, VICE CHAIR	X		
REP. PAUL CLARK, VICE CHAIR	X		
REP. ARLENE BECKER	X		
REP. ROBYN DRISCOLL	X		
REP. GEORGE EVERETT	X		
REP. GAIL GUTSCHE	X		
REP. CHRISTOPHER HARRIS	X		
REP. ROGER KOOPMAN	X		
REP. MIKE LANGE	X		
REP. TOM MCGILLVRAY	X		
REP. MARK NOENNIG	X		
REP. ART NOONAN	X		
REP. JOHN PARKER	X		
REP. JON SONJU	X		
REP. JOHN WARD	X		
REP. BILL WILSON	X		
REP. JEANNE WINDHAM	X		

Montana House of Representatives
Visitors Register

JUDICIARY COMMITTEE

Date 3-23-05

Bill No. SB-468 Sponsor(s) Sen J. Mangan

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Name and Address	Representing	Support	Oppose	Inf.
Debra Silk	MTBBA	✓		
Kathy Brainer	OPI	✓		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

/s/JudicVisitorReg.sample2003

Montana House of Representatives Visitors Register

JUDICIARY COMMITTEE

Date 3-23-05

Bill No. SB-470 Sponsor(s) Sen D. Harrington

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[illegible]

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

/s/JudicVisitorReg.sample2003

Montana House of Representatives Visitors Register

JUDICIARY COMMITTEE

Date _____

Bill No. SB447 Sponsor(s) SEN Ellingson

PLEASE PRINT

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PLEASE PRINT

[illegible]

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

/s/JudicVisitorReg.sample2003

Montana House of Representatives
Visitors Register

JUDICIARY COMMITTEE

Date 3-23-05

Bill No. SB-485 Sponsor(s) Sen J. Ellingson

PLEASE PRINT

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Name and Address	Representing	Support	Oppose	Inf.
Barbara Allen	Pride	✓		
Charlie Briggs	MARDS-SA	✓		
Anita Rossmann	MAP	✓		
Andy Huff	ACLU	✓		
Eric Schedermayer	MT Catholic Conference	X		
Jessica Grennan	ASUM	X		
David Westlake	St. James Health			X
Kris Brandt	Montana Health Info. Mgmt			X
Ali Boyington	Atty Gen's office	X		
Jerry Kendrick	MHRN	X		
Mike Graham	MDOC / MSP			X
Neil Haight	AARP	✓		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

/s/JudicVisitorReg.sample2003

Montana House of Representatives
Visitors Register

JUDICIARY COMMITTEE

Date 3-23-05

Bill No. SB-452 Sponsor(s) Sen G. Perry

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Name and Address	Representing	Support	Oppose	Inf.
Leslie McClintock	Missoula Office of Planning & Grants - CWA of	yes		
Maura Costea	Missoula County Crime Victim Advocates	yes		
Gregg Willoughby	Missoula Police Dept	yes		
Judy Wang	Missoula City Atty	yes		
Susan Hansen	Domestic Violence Emergency Services - Polson	yes		
Allyson Branger	MT Legal Serv.	X		
Matthew Self	DoJ	X		
Helen Schmitt	Richland Co. Coalition Against Dom. Violence	X		
Ali Buringdon	Atty Gen'l's Office	X		
Tooke Welker	Self	X		
Kate Chulena	MCADSV	X		
Nanette Smith	MT County Attorneys Association	✓		
Nal Haight	Self	✓		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

/s/JudicVisitorReg.sample2003

Montana House of Representatives
Visitors Register

JUDICIARY COMMITTEE

Date 3-23-05

Bill No. SJ-6 Sponsor(s) Sen M. Wheat

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Name and Address	Representing	Support	Oppose	Inf.
Ann Gilkey	State Bar	X		
Klaus Sittler	MT. Legal Sum	X		
Beth Baker	Access to Justice Committee	X		
Donna Goff		X		
Helen Schmitt	Rich. Co. Coordination Against Dom. Violence	X		
Eric Schiedemayer	MT Catholic Conference	X		
Ali Boringdon	Atty Gen'l's Office	X		
Kim Abbott	WELC	X		
Kate Chelanga	MEASU	X		
Neil Haight	self	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

/s/JudicVisitorReg.sample2003

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DIANE RICE**, on March 30, 2005 at 8:00 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Diane Rice, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Ron Stoker, Vice Chairman (R)
Rep. Arlene Becker (D)
Rep. Robyn Driscoll (D)
Rep. George Everett (R)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Roger Koopman (R)
Rep. Tom McGillvray (R)
Rep. Mark E. Noennig (R)
Rep. Art Noonan (D)
Rep. John Parker (D)
Rep. Jon Sonju (R)
Rep. John Ward (R)
Rep. Bill Wilson (D)
Rep. Jeanne Windham (D)

Members Excused: None.

Members Absent: Rep. Michael Lange (R)

Staff Present: John MacMaster, Legislative Branch
Pam Schindler, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 18, 207, 493, 3/23/2005
Executive Action: SB 18, 470-Do Concur; SB 114, 385-
Do Concur As Amended

HEARING ON SB 18

Sponsor: SEN. MICHAEL WHEAT, SD 32, BOZEMAN

Opening Statement by Sponsor:

SEN. MIKE WHEAT (D), SD 32, opened the hearing on SB 18, Provide additional judge for 18th Judicial District. SEN. WHEAT stated that would allow a third judge for Gallatin County.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 35}

Proponents' Testimony:

Dorothy McCarter, District Judge, Lewis and Clark County, Montana Judges Association, rose in support of SB 18.

{Tape: 1; Side: A; Approx. Time Counter: 35 - 41}

Mike Salvagni, District Judge, Gallatin County, spoke in support of SB 18; he further stated that the caseload in 2003 had risen by 67%. The number of cases filed in 2004 versus 2003, increased by 339 cases.

[EXHIBIT\(juh67a01\)](#)

{Tape: 1; Side: A; Approx. Time Counter: 41 - 140}

Joe Skinner, Gallatin County Commissioner, rose in support of SB 18 and stated that with the growing population of their jurisdiction, the need for a third judge is great.

[EXHIBIT\(juh67a02\)](#)

{Tape: 1; Side: A; Approx. Time Counter: 140 - 170}

Linda White, Gallatin County Bar Association, rose in support of SB 18.

{Tape: 1; Side: A; Approx. Time Counter: 170 - 198}

Marty Lambert, Gallatin County Attorney, spoke in strong support of SB 18 and spoke to the committee about the number of cases that have come through their office is at an all time high. Mr. Lambert explained how the judges need to prioritize their caseloads of criminal, mental commitments and child neglect cases.

{Tape: 1; Side: A; Approx. Time Counter: 198 - 239}

Jed Fitch, Montana Trial Lawyers Association, rose in agreement with Mr. Lambert about the need to prioritize criminal cases.

{Tape: 1; Side: A; Approx. Time Counter: 239 - 255}

SEN. GARY PERRY, SD 35, MANHATTAN, rose in support of SB 18.

{Tape: 1; Side: A; Approx. Time Counter: 255 - 265}

Holly Brown, District Court Judge, Gallatin County, spoke to the committee about her appointment after the previous judge had passed away. She explained how the litigants must wait months before receiving an "answer" by the judge. **Judge Brown** stated that her court presently has trials scheduled for January and February, 2006.

{Tape: 1; Side: A; Approx. Time Counter: 265 - 315}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. KOOPMAN addressed Mr. Lambert about the appointment of the third judge and was concerned that an election should be held for that judge rather than an appointment. **Mr. Lambert** explained that the next election would not be until November, 2006 and that the county cannot wait that long. They continued their discussion as to the pros and cons of appointed versus elected judges.

REP. KOOPMAN then referred some of the same questions to Mr. Salvagni for clarification.

REP. SONJU spoke with the sponsor about the fiscal note, specifically Line 5, regarding court reporters and the equipment necessary to do their job.

REP. HARRIS spoke with **SEN. WHEAT** about the appointment of Judge Brown; he was interested if there was any criticism regarding the appointment versus waiting for an election. **SEN. WHEAT** stated, "No, absolutely not." The **REPRESENTATIVE** then addressed Ms. Brown regarding the same issue. **Ms. Brown** replied that the selection process is very arduous, nonpartisan and very thorough.

REP. NOENNIG spoke with the sponsor about the caseload per District Court Judge throughout the State.

REP. RICE asked the **SENATOR** about the lack of presence by the Court Administrator for the hearing.

{Tape: 1; Side: A; Approx. Time Counter: 315 - 500}

{Tape: 1; Side: B; Approx. Time Counter: 0 - 100}

Closing by Sponsor:

SEN. WHEAT closed the hearing on SB 18 and stated that this is not a political or partisan issue.

{Tape: 1; Side: B; Approx. Time Counter: 100 - 120}

HEARING ON SB 493

Sponsor: SEN. JESSE LASLOVICH, SD 43, ANACONDA

Opening Statement by Sponsor:

SEN. JESSE LASLOVICH (D), SD 43, opened the hearing on **SB 493**, Revise motor vehicle liability insurance laws. **SEN. LASLOVICH** spoke to the committee about the number of people who do not obtain liability insurance for their vehicles. This bill would provide among other things, that a survey be done by the Department of Justice that would involve people who are convicted of having no liability insurance.

{Tape: 1; Side: B; Approx. Time Counter: 120 - 262}

Proponents' Testimony:

Brenda Nordlund, Motor Vehicle Division, assistant, Attorney General, rose in support and spoke to the committee about Section 4 as it related to the SR 22 and SR 26 types of insurance. She spoke at length about the number of vehicles driven with no liability and that many of current deterrents do not work.

EXHIBIT(juh67a03)

{Tape: 1; Side: B; Approx. Time Counter: 262 - 430}

Roger McGlenn, Independent Insurance Agents of Montana, spoke in support of SB 493 and began his testimony by explaining how this bill would interact with 61-6-133, MCA, regarding uninsured vehicles.

{Tape: 1; Side: B; Approx. Time Counter: 430 - 500}

{Tape: 2; Side: A; Approx. Time Counter: 0 - 29}

Dwight Easton, Farmers Insurance Company, rose in support of SB 493 and stated that this will address the issue of SR 22 insurance. **Mr. Easton** also spoke for Jacqueline Lenmark, American Insurance Association, who is also in support of SB 493.

{Tape: 2; Side: A; Approx. Time Counter: 29 - 43}

Greg VanHorsen, State Farm Insurance, spoke in support of SB 493.

{Tape: 2; Side: A; Approx. Time Counter: 43 - 47}

Larry Kibbee, Property Casualty Insurance of America, spoke in support of SB 493.

{Tape: 2; Side: A; Approx. Time Counter: 47 - 53}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. EVERETT spoke with Ms. Nordlund about the 15,000 violations that she had spoken of in her testimony. **Ms. Nordlund** stated that many of these violations are convictions of people who do not have insurance under 61-6-304, MCA. She proceeded to inform the committee of the fines and penalties that an offender would receive from a first offense, etc.

The **REPRESENTATIVE** continued with his conversation with Mr. VanHorsen. He was interested in the fiscal note and the number of accidents that involve drivers without insurance. **Mr. VanHorsen** was unable to answer many of the questions, but assured the REPRESENTATIVE that the information would be distributed to the committee as soon as possible.

REP. SONJU asked Mr. Easton about the insurance companies opinion as to why people do not have insurance and how that affects insurance companies. **REP. SONJU** queried Mr. Easton about whether or not insurance rates would decrease if this bill were to pass and more people drove vehicles with insurance. **Mr. Easton** replied, "...I cannot say for sure, but if [the insurance companies] have less uninsured drivers, there may be lower costs."

REP. NOENNIG questioned Ms. Nordlund about Section 15 as to the penalties and fines that would be levied for the violation of no insurance. They continued their conversation as to why people do not have insurance, and if offenders do not have "regular" liability insurance, why they are not purchasing SR 22 insurance.

REP. MCGILLVRAY spoke with Ms. Nordlund about the survey that is indicated in SB 493. **Ms. Nordlund** replied that the survey would be backward looking. **SEN. LASLOVICH** stood and explained that the survey would be applicable to first-time offenders.

REP. KOOPMAN questioned Mr. McGlenn about the insurance companies insuring either the driver or the vehicle. **Mr. McGlenn** replied that the insurance companies insure both and that the insurance "follows" the vehicle. **REP. KOOPMAN** was interested if there was a "bare bones" insurance that low-income people could purchase. **Mr. McGlenn** responded, "State law already requires a minimum insurance package of \$25,000 per person with \$10,000 property damage, which is already very low and 'bare bones'."

The REPRESENTATIVE was also interested in the idea of people who are uninsurable and whether or not they could self-insure.

Mr. McGlenn replied that the law in Montana does not allow self-insuring; but there is a universal assigned-risk program where the next insurance company in the rotation must insure that person, regardless. **REP. KOOPMAN** continued with his questions regarding the language on Page 3, Lines 25-28, referencing changing the word "shall" to "may." **SEN. LASLOVICH** and **Ms. Nordlund** both stated that they saw no problem with a Judge using his or her own discretion in the penalty phase of sentencing.

REP. STOKER began his questions to Ms. Nordlund regarding the 15,000 violations and what the survey proposes to accomplish.

REP. SONJU had a short question for Mr. Vanhorsen regarding the uninsured motorist. **Mr. VanHorsen** stated that 10% of insurance claims are for uninsured motorists. They then discussed the option for the SR 22 insurance.

REP. NOONAN spoke with the sponsor regarding SB 493 and asked if the purpose of the bill was to increase the compliance among uninsured drivers. **SEN. LASLOVICH** stated the frustration level among people involved in automobile accidents has become too high and that hopefully this bill would help.

REP. RICE asked Mr. VanHorsen to supply the committee with information about the possible increase of liability insurance purchased since September 11, 2001.

REP. RICE then questioned Ms. Nordlund about the increased fines and penalties and if there is a "point of no return" for people who cannot afford insurance and they cannot afford to pay the fines. **Ms. Nordlund** replied, "...she agreed to a point; however, driving is a privilege."

{Tape: 2; Side: A; Approx. Time Counter: 53 - 500}

{Tape: 2; Side: B; Approx. Time Counter: 0 - 500}

{Tape: 3; Side: A; Approx. Time Counter: 0 - 57}

Closing by Sponsor:

SEN. LASLOVICH closed the hearing on SB 493 and stated that the deletion of the second offense or subsequent violation would be acceptable.

He further commented about the argument made for the low-income problem, "...it amazes me how people who are concerned about the cost of car insurance for low-income people and that they [low-income people] are not able to afford to purchase this insurance,

[but these same people] are not concerned about the people who cannot afford to purchase health insurance for themselves or their kids."

SEN. LASLOVICH concluded his closing by stating, "People who follow the law are paying for those who do not." The SENATOR was amenable to the deletion of the survey from SB 493.

{Tape: 3; Side: A; Approx. Time Counter: 57 - 137}

HEARING ON SB 207

Sponsor: SEN. GARY PERRY, SD 35, MANHATTAN

Opening Statement by Sponsor:

SEN. GARY PERRY (R), SD 35, opened the hearing on **SB 207**, Electronic monitoring of sexual offenders. The **SENATOR** explained SB 207 to the committee and stated that there is a pilot program in the State of Tennessee that mirrors SB 207.

EXHIBIT(juh67a04)

{Tape: 3; Side: A; Approx. Time Counter: 137 - 211}

Proponents' Testimony:

Marty Lambert, Montana County Attorney Association, rose in support and stated that this is a good first step. He stated that there are not that many Level Three sex offenders with the Department of Corrections; so this would be a good time to start a "pilot program." This bill would help judges to determine who should be a Level Three sex offender.

{Tape: 3; Side: A; Approx. Time Counter: 211 - 243}

Mike Ferriter, Department of Corrections, rose in support of SB 207 and stated that the monitoring capabilities would be outstanding.

{Tape: 3; Side: A; Approx. Time Counter: 243 - 274}

Pam Bucy, assistant Attorney General, rose in support of SB 207 and stated that many states are proposing this type of legislation especially in the Eastern and Southeastern States.

This bill will attach this specified penalty to the sentencing portion, not the administration portion of the sentence; therefore, there would be no problem with due process.

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. KOOPMAN spoke with Ms. Bucy about the methodology with Level Three sex offenders and that, "...they have a higher rate of recidivism, so why not lock them up forever." **Ms. Bucy** replied that current sentencing structure does not always apply and so offenders may not be kept in Montana State Prison forever. The REPRESENTATIVE was interested in whether or not the device could be removed. **Ms. Bucy** replied, "...if they do remove the device, that makes for very strong circumstantial evidence."

REP. KOOPMAN continued with questioning the sponsor about the civil liberty and due process issues that may arise with SB 207.

REP. MCGILLVRAY spoke with Ms. Bucy and Mr. Ferriter about what is currently being done regarding monitoring and the new technology that is available using both phone lines and the GPS system.

REP. NOENNIG questioned Ms. Bucy about the registration of Level Three sex offenders even after they have served their sentence. **Ms. Bucy** replied that they do register through the administrative process. They continued their conversation about due process and how this bill would enable them to be sentenced to wearing this device through the sentencing process, not the administrative process.

REPS. STOKER and **SONJU** finished the question portion regarding the costs related to the wearing of this device, (\$8.50 daily) and that the cost could be paid by the offender as a condition of the probation or parole.

{Tape: 3; Side: A; Approx. Time Counter: 274 - 500}

{Tape: 3; Side: B; Approx. Time Counter: 0 - 155}

Closing by Sponsor:

SEN. PERRY closed the hearing on SB 207 and stated to the committee that originally, he had wanted to have all sexual offenders wear this device but the fiscal note was too high. If an offender removes the device, there would be further evidence to hasten the prosecution of an offender.

{Tape: 3; Side: B; Approx. Time Counter: 155 - 255}

EXECUTIVE ACTION ON SB 18

(Please Note: REPS. LANGE and WILSON absent from the room.)

Motion/Vote: REP. HARRIS moved DO CONCUR. Motion carried 17-1 by voice vote with REP. EVERETT voting no. (REPS. LANGE and WILSON voted by proxy vote.) (REP. HARRIS to carry)
{Tape: 3; Side: B; Approx. Time Counter: 255 - 332}

EXECUTIVE ACTION ON SB 114

(Please Note: REP. PARKER absent from the room.)

Motion: REP. HARRIS moved that SB 114 BE CONCURRED IN.

Motion: REP. HARRIS moved that SB 114 BE AMENDED.
[EXHIBIT](#) (juh67a05)

Discussion:

Mr. MacMaster explained the amendment to the committee members.

Vote: Motion that SB 114 BE AMENDED carried 17-1 by voice vote with REP. KOOPMAN voting no. (REPS. LANGE, WILSON and PARKER voted by proxy vote.)

Motion: REP. HARRIS moved that SB 114 BE CONCURRED IN AS AMENDED.

Discussion:

Mr. MacMaster explained the bill in its entirety to the committee members.

Vote: Motion that SB 114 BE CONCURRED IN AS AMENDED carried unanimously by voice vote. (REPS. LANGE, WILSON and PARKER voted by proxy vote.) (REP. HARRIS to carry.)
{Tape: 3; Side: B; Approx. Time Counter: 332 - 500}
{Tape: 4; Side: A; Approx. Time Counter: 0 - 73}

EXECUTIVE ACTION ON SB 385

Motion: REP. STOKER moved that SB 385 BE CONCURRED IN.

Motion: REP. STOKER moved that SB 385 BE AMENDED by CHANGING "INVESTIGATION" to "COMPLAINT" and DELETING "WRITTEN AUTHORIZATION."

Discussion:

REP. CLARK explained the amendment to the committee members.

Vote: Motion that SB 385 BE AMENDED carried unanimously by voice vote. (REPS. LANGE, WILSON and PARKER voted by proxy vote.)

Motion: REP. STOKER moved that SB 385 BE CONCURRED IN AS AMENDED.

Discussion:

The committee discussed the bill with the amendment and spoke about the stories that constituents have shared with them regarding Child Protective Services and Department of Public Health and Human Services.

Vote: Motion that SB 385 BE CONCURRED IN AS AMENDED carried unanimously by voice vote. (REPS. LANGE, WILSON and PARKER voted by proxy vote.) (REP. KOOPMAN to carry.)
{Tape: 4; Side: A; Approx. Time Counter: 73 - 396}

EXECUTIVE ACTION ON SB 470

Motion/Vote: REP. STOKER moved that SB 470 BE CONCURRED IN. Motion carried unanimously by voice vote. (REPS. LANGE, WILSON and PARKER voted by proxy vote.) (REP. NOONAN to carry.)
{Tape: 4; Side: A; Approx. Time Counter: 396 - 415}

ADJOURNMENT

Adjournment: 11:55 A.M.

REP. DIANE RICE, Chairman

PAM SCHINDLER, Secretary

DR/ps

Additional Exhibits:

EXHIBIT ([juh67aad0.PDF](#))

HOUSE OF REPRESENTATIVES
Roll Call
JUDICIARY COMMITTEE

DATE 3/30/05

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT</u>	<u>EXCUSED</u>
REP. DIANE RICE, CHAIR	X		
REP. RON STOKER, VICE CHAIR	X		
REP. PAUL CLARK, VICE CHAIR	X		
REP. ARLENE BECKER	X		
REP. ROBYN DRISCOLL	X		
REP. GEORGE EVERETT	✓		
REP. GAIL GUTSCHE	X		
REP. CHRISTOPHER HARRIS	X		
REP. ROGER KOOPMAN	X		
REP. MIKE LANGE		X	
REP. TOM MCGILLVRAY	X		
REP. MARK NOENNIG	X		
REP. ART NOONAN	X		
REP. JOHN PARKER	X		
REP. JON SONJU	X		
REP. JOHN WARD	X		
REP. BILL WILSON	X		
REP. JEANNE WINDHAM	X		



HOUSE STANDING COMMITTEE REPORT

March 30, 2005

Page 1 of 1

Mr. Speaker:

We, your committee on **Judiciary** recommend that **Senate Bill 18** (third reading copy -- blue) be **concurred in**.

Signed:

Diane Rice
Representative Diane Rice, Chair

To be carried by Representative Christopher Harris

- END -

Committee Vote:
Yes 17, No 1.

3/30
mp
671416SC.hkh



HOUSE STANDING COMMITTEE REPORT

March 30, 2005

Page 1 of 3

Mr. Speaker:

We, your committee on **Judiciary** recommend that **Senate Bill 114** (third reading copy -- blue) be concurred in as amended.

Signed: _____

Diane Rice
Representative Diane Rice, Chair

To be carried by Representative Christopher Harris

And, that such amendments read:

1. Title, page 1, line 9 through line 11.

Strike: "MAKING" on line 9 through "PRACTICES" on line 11

Insert: "CLARIFYING LANGUAGE RELATING TO INSURANCE OFFENSES"

2. Title, page 1, line 11.

Following: "33-2-104,"

Insert: "AND"

3. Title, page 1, line 12.

Strike: "AND 45-6-317,"

4. Page 1, line 17.

Following: "fraud."

Insert: "(1)"

Strike: "act"

Insert: "offense"

5. Page 1, line 18.

Strike: "(1)"

Insert: "(a)"

Renumber: subsequent subsections

Committee Vote:

Yes 18, No 0.

3/30

ump

671417SC.hkh

6. Page 2, line 6.

Insert: "(2) A person who knowingly violates this section commits the offense of insurance fraud and shall be imprisoned for a term not to exceed 10 years or fined an amount not to exceed \$100,000, or both."

7. Page 2, line 8.

Strike: "Penalties"

Insert: "Civil penalties"

8. Page 2, line 12 through line 13.

Strike: subsection (2) in its entirety

Renumber: subsequent subsection

9. Page 3, line 8 through line 12.

Strike: subsection (7) in its entirety

Insert: "(7) A person who knowingly misappropriates an insurance premium paid by or proceeds due an insured is guilty of a felony and shall be imprisoned for a term not to exceed 10 years or fined an amount not to exceed \$100,000, or both. The commissioner may refer a suspected offense to the attorney general or the appropriate county attorney."

10. Page 3, line 15.

Strike: "Certificate of authority"

Insert: "Authorization"

11. Page 3, line 15 through line 20.

Strike: subsection (1) in its entirety

Insert: "(1) A person may not act as an insurer and an insurer may not transact insurance in this state except as authorized in this code."

12. Page 3, line 24.

Strike: "convicted of purposely or knowingly violating"

Insert: "who knowingly violates"

Following: "felony"

Insert: "and shall be imprisoned for a term not to exceed 10 years or fined an amount not to exceed \$100,000, or both, "

13. Page 4, line 8 through line 9.

Strike: subsection (3) in its entirety

Insert: "(3) A person who knowingly violates this section is guilty of a felony and shall be imprisoned for a term not to exceed 10 years or fined an amount not to exceed \$100,000, or both."

14. Page 4, line 13.

Strike: the second "or"

Strike: "purposely"

15. Page 4, line 18.

Strike: "Subject to 46-11-410, a"

Insert: "A"

16. Page 4, line 19.

Strike: the second "or"

Strike: "purposely"

17. Page 4, line 23 through line 25.

Strike: "theft" on line 23 through "person" on line 25

Insert: "a felony and shall be imprisoned for a term not to exceed 10 years or fined an amount not to exceed \$100,000, or both. Either a county attorney or the attorney general may prosecute the person."

18. Page 4, line 29 through page 5, line 22.

Strike: section 7 in its entirety

- END -



HOUSE STANDING COMMITTEE REPORT

March 30, 2005

Page 1 of 1

Mr. Speaker:

We, your committee on **Judiciary** recommend that **Senate Bill 385** (third reading copy -- blue) be concurred in as amended.

Signed:

Diane Rice
Representative Diane Rice, Chair

To be carried by Representative Roger Koopman

And, that such amendments read:

1. Page 2, line 6.

Strike: "allegations"

Insert: "complaints"

2. Page 5, line 17.

Following: "2-15-210"

Strike: remainder of line 17 through "2-15-210(6)"

3. Page 7, line 21.

Following: "2-15-210"

Strike: remainder of line 21 through "2-15-210(6)"

- END -

Committee Vote:

Yes 18, No 0.

3/30

mp

671418SC.hkh



HOUSE STANDING COMMITTEE REPORT

March 30, 2005

Page 1 of 1

Mr. Speaker:

We, your committee on **Judiciary** recommend that **Senate Bill 470** (third reading copy -- blue) be concurred in.

Signed: _____

Diane Rice
Representative Diane Rice, Chair

To be carried by Representative Art Noonan

- END -

Committee Vote:
Yes 18, No 0.

3/30
ump
671419SC.hkh

COMMITTEE PROXY

DATE _____

I request to be excused from the Judiciary
Committee meeting this date because of other commitments. I desire to leave my proxy vote
with _____

Rep. Paul "What kind of message are we sending here?" Clark

Indicate Bill number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

SENATE

HOUSE BILL/AMENDMENT AYE NO

SENATE BILL/AMENDMENT

AYE

NO

3/4	Stoker amend to SB166		✓	
	Clark amend to SB166	✓		
	Wrenning " to SB166	✓		
	SB 166 Do pass	✓		
3/15	SB 355 Do Concern	✓		
3/22/05	SB 426 Do Concern	✓		
	Amend SB Y35	✓		
	SB 435 DO Concern	✓		
3/30	SB 18 DO Concern	✓		
	SB 114 Harris Amend	✓		
	SB 114 Do concern	✓		
5/30	SB 375 Do concern to	✓		
	SB 470 Do concern	✓		

Amend 201 to SB 2	✓		
SB 2 Do Concern	✓		
Amend 119	✓		
SB 119 Do concern	✓ P.C.		
SB 139 DO concern			✓
Amend SB 357	✓		
SB 357 DO TABLE	✓ P.C.		
Keep Amend SB 427			✓
Keep Amend SB Y23			✓
SB 423 Do concern	✓		
SB 385 Amend	✓		
SB 385 DO Concern	✓		
SB 470 DO concern	✓		

Rep. Bill Wilson

(Signature)

COMMITTEE PROXY

DATE 3/30/2005

I request to be excused from the House Judiciary
Committee meeting this date because of other commitments. I desire to leave my proxy vote
with Rep. Stoker

Indicate Bill number and your vote Aye or No. If there are amendments, list them by name and
number under the bill and indicate a separate vote for each amendment.

HOUSE BILL/ AMENDMENT AYE NO

SENATE BILL/AMENDMENT AYE NO

SB-18	X	
SB-114 ¹¹⁴⁻⁰² Amend	X	
SB 114 + Amend	X	
SA 385 + A 38504	X	
SB 385 + Amend	X	
SB 496 DoConcur	X	

Rep. Michael Jung
(Signature)

COMMITTEE PROXY

DATE _____

I request to be excused from the Judiciary
Committee meeting this date because of other commitments. I desire to leave my proxy vote
with Rep. Clark

Indicate Bill number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

Senate

HOUSE BILL/ AMENDMENT AYE NO

SENATE BILL/AMENDMENT AYE NO

3/4

Stoker amend to SB166		✓
Clark amend to SB166	✓	
Noconcur amend to SB166	✓	
SB166 Do pass	✓	
HB 205 - Table	✓	
Amend 1, SB112	✓	
Amend 2, SB112	✓	
Harris amend		✓
SB 112 Do Pass	✓	
SB 204 Do Concur		✓
SB 205 Do Concur	✓	
SB 260 Do Concur	✓	
3/14/05 SB 352 Do Concur	✓	
SB 282 Do Pass	✓	
SB 231 Do Concur	✓	

3/29/05

SB 426 Do Concur	✓	
SB 435 Do Concur	✓	
SB 435 Do Concur	✓	
Amend 201 to SB 2	✓	
SB 2 Amend	✓	
SB 2 Do Concur	✓	
Amend SB 119	✓	
SB 119 Do Concur	✓	
SB 139 Do Concur		✓
Amend SB 357	✓	
SB 357 Do Table	✓	PC
Keep Amend SB 423		✓
SB 423 Do Concur	✓	

Rep.

John Parker

(Signature)

3/30

SB 114 Harris Amend ✓
SB 114 Do Concur ✓
SB 385 Amend ✓
SB 385 Do Concur ✓
SB 470 Do Concur ✓

Montana House of Representatives
Visitors Register

JUDICIARY COMMITTEE

Date 3-30-05

Bill No. SB-18 Sponsor(s) Sen M. Wheat

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Name and Address	Representing	Support	Oppose	Inf.
Carol Schweitzer	Bureau Chamber	X		
Dorothy McCarter	MT Judges Assoc	X		
JOE SKINNER	Gallatin Co Commission	X		
Wally Lambert	Gallatin Co Atty	X		
Lynda White	Gallatin Co Bar Assoc	X		
Mike Salvagni	18th Judicial District	X		
Holly Brown	18th Judicial Dist	X		
Gary Perry	SD 35	X		
GORDON MORRIS	MACo	X		
Jed Fitch	MTLA	X		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

Montana House of Representatives
Visitors Register

JUDICIARY COMMITTEE

Date 3-30-05

Bill No. SB-493 Sponsor(s) Sen J. Haslovich

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Name and Address	Representing	Support	Oppose	Inf.
<i>Roger McGowan</i>	<i>IIAM</i>	<i>X</i>		
<i>Donna Enten</i>	<i>Farmers Ins Co</i>	<i>X</i>		
<i>Brendon Nordlund</i>	<i>DOJ/MVD</i>	<i>X</i>		
<i>Jacqueline Denmark</i>	<i>AIA</i>	<i>X</i>		
<i>Gregory Hansen</i>	<i>State Farm</i>	<i>X</i>		
<i>Jerry Butler</i>	<i>PCI</i>	<i>X</i>		

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.
/s/JudicVisitorReg.sample2003

Montana House of Representatives
Visitors Register

JUDICIARY COMMITTEE

Date 3-30-05

Bill No. SB-207 Sponsor(s) Sen G. Perry

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Name and Address	Representing	Support	Oppose	Inf.
<u>Pam Buey</u>	<u>DOJ</u>	☒	☐	

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.
/s/JudicVisitorReg.sample2003